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REGION 2 NEWS

The New York Times: E.P.A. Opts Against Limits on Water Contaminant Tied to Fetal Damage

The Trump administration will not impose any limits on perchlorate, a toxic chemical compound that contaminates water and has been linked to fetal and infant brain damage, according to two Environmental Protection Agency staff members familiar with the decision.

The Washington Post: EPA decides against limits on drinking water pollutant linked to health risks, especially in children

The Environmental Protection Agency has decided not to limit perchlorate, a chemical that has long been detected in the drinking water of many Americans and linked to potential brain damage in fetuses and newborns and thyroid problems in adults, according to two agency officials briefed on the matter.

Natural Resources Defense Council: EPA Refuses to Protect Children from Perchlorate-Contaminated Tap Water

In an extraordinary decision, President Trump's Environmental Protection Agency (EPA) administrator Andrew Wheeler has decided to defy a court-ordered consent decree requiring the agency to issue a drinking water standard for the widespread contaminant perchlorate. Studies show this chemical poses threats to the brain development of fetuses and young infants and has been found in millions of Americans' tap water. The decision, which not only ignores the science but violates a court order and the law, is expected to be announced publicly in coming weeks.

The Hill: EPA won't regulate rocket fuel chemical tied to developmental damage: NYT

The Environmental Protection Agency (EPA) will not set a limit on a chemical used in rocket fuel that has been linked with brain damage, The New York Times reported Thursday, though the agency said it has not yet made a final decision on the rule.

New Jersey Spotlight: Senate Votes to Extend Permits for Projects that Were Halted by COVID-19

The Senate gave final approval yesterday to legislation that would extend permit approvals for projects derailed by the COVID-19 pandemic, a tactic lawmakers have favored in the past during prior economic downturns.

Virgin Islands Daily News: Mask wearing 'crucial' to preventing COVID-19 spread

Territorial Epidemiologist Dr. Esther Ellis implored Virgin Islanders to properly wear face masks — regardless of how uncomfortable they might be.

Poughkeepsie Journal: Hudson River Housing to receive \$25K in assistance for Poughkeepsie Underwear Factory

Hudson River Housing will be able to add food production and processing to the Poughkeepsie Underwear Factory thanks to assistance from the U.S. Environmental Protection Agency.

New York Post: MTA weighs reserved seating for subways and buses when lockdown ends

The MTA is mulling reserved seating for subways and buses to ensure social distancing once New York begins reopening.

El Nuevo Dia: AES Puerto Rico postpones unit maintenance due to pandemic

The COVID-19 pandemic forced cogeneration plant AES Puerto Rico to postpone, for the second time this year, the maintenance of its two units, which produce 15% of the energy on the island by burning coal.

Queens Chronicle: Flood control: work in progress in S. Queens

A resident on Centreville Street in Ozone Park put that question to the Chronicle two weeks ago as he exited his house in a rainstorm, with flooding on the west half of the road so bad it pooled up over the grass median and sidewalk, ending at the front steps to the man's home.

Patch: Gowanus Green Spaces Vital During Coronavirus: Conservancy

Don't let the coronavirus pandemic stop the Gowanus Canal's transformation from industrial wasteland to vital city green space.

E&E News PM: EPA won't set perchlorate limits

EPA will not set drinking water limits on perchlorate, a chemical linked to fetal and developmental brain damage, according to multiple sources.

El Nuevo Dia: The implementation of tracking systems reveals inconsistencies in health data and municipalities

The municipalities that have adopted COVID-19 case tracking systems - given the deficiencies of the central government in this management - have identified inconsistencies between the data handled by the Department of Health and the cases detected at the municipal level.

El Nuevo Dia: The Department of Health receives the antiviral remdesivir to treat COVID-19 patients

The Department of Health received last Tuesday, the drug remdesivir , antiviral recently received authorization from the Federal Administration Food and Drug Administration (FDA, for its acronym in English) for emergency use in adults and children hospitalized with diagnosis COVID-19.

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Bloomberg Law: Groups Fault EPA Move to Ease Air Permit Terms Without New Rule

BLOOMBERG: Cleaner Air Is Actually Hobbling California's Climate Fight

LAW 360: Petro Groups Attack Year-Round High-Ethanol Rule In DC Circ.

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INSIDE EPA: Regulation: Agriculture sector urges Congress to press EPA on crop GHGs

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Bloomberg Law: EPA to Begin First-Ever 'Unilateral' New Chemical Restriction

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CHEMICAL WATCH: Comments on TSCA risk evaluations foretell preemption uncertainty ahead

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[INSIDE EPA: Speedy EPA Schedule Might Hamper SAB Calls To Strengthen Lead Rule](#)

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[BLOOMBERG: Contaminated Harbor Cleanup Delayed as EPA, Companies Feud](#)

[INSIDE EPA: DOJ Defends Mitigation Projects In Settlements, Despite Ban On SEPs](#)

[Inside EPA: States Launch Facial Challenge To EPA's COVID Enforcement 'Discretion'](#)

[Law360: EPA Coal Ash Proposals Offer Flexibility, But Also Uncertainty](#)

[LAW 360: State AGs Sue EPA Over COVID-19 Enforcement Policy](#)

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[New York Times: E.P.A. Opts Against Limits on Water Contaminant Tied to Fetal Damage](#)

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[Bloomberg Law: EPA Says Perchlorate Largely Below Safe Levels in Tap Water](#)

FULL ARTICLES

REGION 2

The New York Times

<https://www.nytimes.com/2020/05/14/climate/trump-drinking-water-perchlorate.html>

E.P.A. Opts Against Limits on Water Contaminant Tied to Fetal Damage

A new E.P.A. policy on perchlorate, which is used in rocket fuel, would revoke a 2011 finding that the chemical should be regulated.

By Lisa Friedman

May 14, 2020

The Trump administration will not impose any limits on perchlorate, a toxic chemical compound that contaminates water and has been linked to fetal and infant brain damage, according to two Environmental Protection Agency staff members familiar with the decision.

The decision by Andrew Wheeler, the administrator of the E.P.A., appears to defy a court order that required the agency to establish a safe drinking-water standard for the chemical by the end of June. The policy, which acknowledges that exposure to high levels of perchlorate can cause I.Q. damage but opts nevertheless not to limit it, could also set a precedent for the regulation of other chemicals, people familiar with the matter said.

The chemical — which is used in rocket fuel, among other applications — has been under study for more than a decade, but because contamination is widespread, regulations have been difficult.

In 2011, the Obama administration announced that it planned to regulate perchlorate for the first time, reversing a decision by the George W. Bush administration not to control it. But the Defense Department and military contractors such as Lockheed Martin and Northrop Grumman have waged aggressive efforts to block controls, and the fight has dragged on.

According to the staff members, who asked not to be identified because they were not authorized to speak about agency decisions, the E.P.A. intends in the coming days to send a federal register notice to the White House for review that will declare it is “not in the public interest” to regulate the chemical.

Andrea Woods, a spokeswoman for the E.P.A., said in a statement that the agency had not yet made a final decision on perchlorate. “Any information that is shared or reported now would be premature, inappropriate and would be prejudging the formal rulemaking process,” she said.

Ms. Woods said the final rule would be sent to the Office of Management and Budget for interagency review, adding “the agency expects to complete this step shortly.” She did not answer questions about the court order.

Perchlorate can occur naturally, but high concentrations have been found in at least 26 states, often near military installations where it has been used as an additive in rocket fuel, making propellants more reliable. Research has shown that by interfering with the thyroid gland’s iodine uptake, perchlorate can stunt the production of hormones essential to the development of fetuses, infants and children.

The new policy will revoke the 2011 E.P.A. finding that perchlorate presents serious health risks to between 5 million and 16 million people and should be regulated. To justify doing so, the Trump administration will cite more recent analyses claiming concentrations of the chemical in water must be at higher levels than previously thought in order to be considered unsafe.

In addition, because states like California and Massachusetts regulated the chemical in the absence of federal action, the E.P.A. will say few public water systems now contain perchlorate at high levels, so the costs of nationwide monitoring would outweigh the benefits, the people who have viewed the rule said.

“The agency has determined that perchlorate does not occur with a frequency and at levels of public health concern, and that regulation of perchlorate does not present a meaningful opportunity for health risk reduction for persons served by public water systems,” the draft policy reads, according to the staff members.

In public comments, the Perchlorate Study Group, a coalition made up of aerospace contractors including Aerojet Rocketdyne, American Pacific Corporation, Lockheed Martin, and Northrop Grumman Innovation Systems, had strongly urged the E.P.A. to withdraw its 2011 determination because “perchlorate does not occur with a frequency and at levels of public health concern” in public water systems.

The decision is the latest in a string of Trump administration regulatory actions that weaken toxic chemical regulations, often against the advice of E.P.A.’s own experts, in ways favored by the chemical industry.

Last year the administration announced it would not ban chlorpyrifos, a widely used pesticide that its own experts linked to serious health problems in children. It also opted to restrict, rather than ban, asbestos, a known carcinogen, despite urging by E.P.A. scientists and lawyers to ban it outright like most other industrialized nations.

“This is all of a piece,” said Rena Steinzor, a law professor at the University of Maryland. “You can draw a line between denial of science on climate change, denial of science on coronavirus, and denial of science in the drinking water context. It’s all the same issue. They’re saying ‘We don’t care what the research says.’”

The regulation of perchlorate has been a political football since the 1990s when testing found the presence of the chemical in hundreds of wells.

In 2008, the Bush administration said it would not set limits on the chemical. One year later, the Obama administration moved to reverse course. It issued a recommendation to states that 15 micrograms per liter is the highest concentration of perchlorate in water that the most sensitive populations, like pregnant women, should ingest.

In 2011, the Obama administration issued an official finding that worrisome levels of perchlorate had been detected in enough public water systems to warrant regulation, and the E.P.A. announced the agency’s intention to set limits.

The Obama administration dragged its feet, though, and the Natural Resources Defense Council, an environmental group, sued. Moving ahead with regulation ultimately fell to the Trump administration and, in 2018, the E.P.A. agreed to a court settlement requiring a final standard on perchlorate. The court granted the administration extensions, and a final standard must be issued by June.

Last year the E.P.A. did propose federal regulation of perchlorate but it suggested a limit of 56 micrograms per liter, more than three times higher than what the E.P.A. had previously determined to be safe.

It also asked for comments from the public on an even higher threshold of 90 micrograms per liter, as well as whether to abandon plans for regulations altogether.

The final rule described by the staff members shows that the administration chose the most extreme option.

In doing so, the policy notes that the idea of setting a limit for 56 micrograms per liter was based on studies showing that it could avoid an average I.Q. loss of two points among babies of iodine-deficient pregnant women.

Even an exposure of 18 micrograms per liter, slightly above the current federal recommendation, would amount to an average I.Q. loss of one point. Critics of the policy said the E.P.A. was implicitly accepting that those health outcomes are not considered adverse health effects, and that the decision could affect the future regulation of other chemicals.

“Not only is E.P.A. acting in defiance of a court order and the law, it’s setting a terrible precedent by ignoring much of the science and allowing such a high level of perchlorate in tap water that it acknowledges is associated with an average 2-point I.Q. loss in exposed kids,” said Erik Olson, senior strategic director of health and food at the Natural Resources Defense Council.

Ms. Woods, the E.P.A. spokeswoman, declined to respond to a question about I.Q. damage from perchlorate.

Chemical industry representatives did not respond immediately to a request to discuss the E.P.A. policy. But in public comments to the agency, they, along with some state water districts and military contractors, urged the E.P.A. to not regulate perchlorate.

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The Washington Post

<https://www.washingtonpost.com/climate-environment/2020/05/14/epa-decides-against-limits-drinking-water-pollutant-linked-health-effects/>

EPA decides against limits on drinking water pollutant linked to health risks, especially in children

‘It’s a bad precedent on so many levels,’ says one environmental activist

By Brady Dennis and Juliet Eilperin

The Environmental Protection Agency has decided not to limit perchlorate, a chemical that has long been detected in the drinking water of many Americans and linked to potential brain damage in fetuses and newborns and thyroid problems in adults, according to two agency officials briefed on the matter.

They spoke on the condition of anonymity because the decision hasn’t been announced.

The move, which comes despite the fact that the EPA faces a court order to establish a national standard for the chemical compound by the end of June, marks the latest shift in a long-running fight over whether to curb the chemical used in rocket fuel.

Under President Barack Obama, the EPA had announced in 2011 that it planned to set the first enforceable limits on perchlorate because of its potential health impacts. Both the Defense Department and military manufacturers have long resisted any restrictions on the chemical, which is also used in fireworks, munitions and other ignition devices. It naturally occurs in some areas, such as parts of the Southwest.

In an email Thursday, EPA spokeswoman Corry Schiermeyer said the agency “has not yet made a final decision” on whether to limit perchlorate in drinking water. “The next step in the process is to send the final action to the Office of Management and Budget for interagency review,” she said. “The agency expects to complete this step shortly.”

The New York Times first reported the agency’s decision.

The EPA also issued a news release Thursday in which Administrator Andrew Wheeler hailed the fact that levels of perchlorate exposure have declined since 2011. Though no federal standards regulating perchlorate levels in drinking water exist, some states have already acted to reduce the amounts in their drinking water systems. California and Massachusetts, for example, have set limits for perchlorate at levels far lower than what the EPA had previously proposed.

“Because of steps that EPA, states and public water systems have taken to identify, monitor and mitigate perchlorate, the levels have decreased in drinking water,” Wheeler said. “This success demonstrates that EPA and states are working together to lead the world in providing safe drinking water to all Americans.”

Environmental advocates were quick to criticize the EPA, saying the failure to institute a national limit on perchlorate in drinking water will leave many Americans vulnerable to potentially harmful health effects.

“It’s a real slap in the face of science, as well as to the court order and the law,” Erik Olson, a water expert at the Natural Resources Defense Council, said in an interview. “It’s a bad precedent on so many levels.”

In a separate blog post on Thursday, Olson said failing to regulate the compound would amount to “a deeply disturbing violation of the agency’s mission.”

Some groups, however, have urged the EPA not to set a federal threshold for perchlorate, saying existing evidence does not warrant it. For instance, in comments last year, both the American Chemistry Council and the American Water Works Association recommended that the EPA withdraw the 2011 determination to impose a national standard.

G. Tracy Mehan III, executive director of government affairs for the water works association, wrote that regulating perchlorate would not present a “meaningful opportunity” to reduce health risks, and that the benefits of such regulation would not justify the costs. “If EPA proceeds,” Mehan wrote, “it will set a troubling precedent and undermine the scientific credibility of the Agency’s regulatory process under the Safe Drinking Water Act.”

Last summer, the EPA sought input on a range of possible limits it was considering on perchlorate in drinking water. The one the agency appeared to favor at the time was a standard of 56 parts per billion — a threshold that public health officials called far too weak, and one that was several times more lenient than the EPA itself had set in a 2009 health advisory.

Even as it sought input on possible regulation last summer, the EPA left open the possibility that it would walk away from the matter, particularly if it determined that the chemical did not occur at levels deemed to present a serious public health risk.

Some health experts pleaded with the agency not to take that approach, including Kyle Yasuda, then-president of the American Academy of Pediatrics. In a letter to the EPA, Yasuda in August urged the agency to adopt the strongest possible curbs on the chemical, based on the “well-established harms of perchlorate ingestion for children.”

“AAP is particularly concerned that EPA is considering withdrawing its 2011 determination to regulate perchlorate, relinquishing national oversight over a chemical with well-established health risks in drinking water,” Yasuda wrote. “This would set a precedent inconsistent with EPA’s stated mission to protect public health.”

Though the EPA has set legal limits on more than 90 contaminants in drinking water, including lead, arsenic and mercury, a far broader universe of “emerging contaminants” remains unregulated.

The agency has long kept tabs on scores of substances that have surfaced in water systems around the country, with the aim of restricting those that endanger public health. But partly because the rules the agency must follow are complicated and contentious, officials have yet to limit any new contaminant for decades. Perchlorate is the only chemical to come close to regulation since the 1990s. Time and again, regulators have backed away.

The last time came on a Friday in 2008, when the Bush administration formally declined to set a drinking-water safety standard for perchlorate. With little fanfare, the agency issued a news release saying it had “conducted extensive review of scientific data related to the health effects of exposure to perchlorate from drinking water and other sources and found that in more than 99 percent of public drinking water systems, perchlorate was not at levels of public health concern.”

In that instance, according to documents obtained by The Washington Post at the time, White House officials heavily edited the scientific findings in the EPA’s rulemaking documentation.

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EPA Refuses to Protect Children from Perchlorate-Contaminated Tap Water

The agency defies a court order, the law, and science.

By Erik D. Olsen

May 14, 2020

In an extraordinary decision, President Trump's Environmental Protection Agency (EPA) administrator Andrew Wheeler has decided to defy a court-ordered consent decree requiring the agency to issue a drinking water standard for the widespread contaminant perchlorate. Studies show this chemical poses threats to the brain development of fetuses and young infants and has been found in millions of Americans' tap water. The decision, which not only ignores the science but violates a court order and the law, is expected to be announced publicly in coming weeks.

What is perchlorate?

Perchlorate is a component of rocket fuel, munitions, and fireworks that the Obama [EPA determined](#) in 2011 requires regulation because of the health threat it poses to the drinking water of as many as 16 million Americans. Wheeler is purporting to reverse that determination.

Perchlorate contamination often occurs as a result of pollution from Department of Defense (DOD) or DOD contractor facilities. EPA required limited national testing of perchlorate in drinking water from 2001 to 2005, which was the basis of its finding of widespread perchlorate contamination. No nationwide monitoring has been required over the past 15 years, so few of us know if it's in our tap water. Because perchlorate threatens the health of fetuses, infants, and young children especially, the [American Academy of Pediatrics](#), [multiple independent scientists](#), and many states (as discussed below) have weighed in, urging EPA to set a strict standard for perchlorate in drinking water. They have been ignored by Wheeler.

What is the regulatory status of perchlorate and what did the court require?

Perchlorate is the first drinking water contaminant that EPA has proposed to regulate in nearly 24 years under the provisions of the Safe Drinking Water Act Amendments of 1996 for setting new standards for unregulated contaminants. The Obama EPA found in 2011 that a perchlorate drinking water standard was needed to protect health, especially that of vulnerable fetuses and young children. This finding triggered a legal duty to regulate perchlorate. When EPA was slow to issue standards after that finding, [NRDC sued](#), and a federal judge hearing the case said that [EPA needs "a fire lit under them"](#) to address the urgent problem. In response, the agency agreed in a court-approved [consent decree](#) to propose a perchlorate drinking water standard by October 2018 and to finalize it by late 2019. EPA sought extensions, citing the need for more study, so the standard is now due in June 2020.

What was EPA's new decision on perchlorate?

In an astonishing step, Wheeler is purporting to revoke the agency's 2011 finding that a perchlorate standard is needed to protect the health of millions of Americans, especially fetuses, infants, and young children. EPA therefore will not comply with the court-ordered consent decree requiring a final drinking water standard for perchlorate by June 2020 and will not comply with the legal requirement to set a standard once it has formally determined that one is necessary.

To explain why it's revoking its previous finding, EPA now contends its 2008 [health advisory](#) for perchlorate in drinking water—set at 15 parts per billion or ppb—is far more protective of health than needed. That 15 ppb health advisory was based on a 2005 [National Academy of Sciences study](#). Instead, Wheeler now finds a level of 56 ppb would be safe, and perhaps even 90 ppb would be fine. EPA admits that a standard of 56 ppb would

allow those kids exposed to perchlorate in drinking water at above this level to have an average IQ loss of two points. People at the lower end of the IQ spectrum could lose far more IQ points. In concluding 56 ppb is safe, the agency would allow an unprecedented level of adverse impact on children's brain development. It also has decided to ignore all other health effects of perchlorate that scientists say can occur at lower doses, rejecting its own previous analysis. EPA's new supposedly "safe" level is nearly 10 times higher than California's standard for perchlorate of 6 ppb. It also is 28 times higher than Massachusetts's standard of 2 ppb. California experts have now recommended that to protect bottle-fed infants, the safe level should be dropped to 1 ppb. Similarly, New Jersey's Drinking Water Quality Institute, a blue-ribbon panel of scientists, recommended a maximum safe level of 5 ppb.

EPA now says that, based on its "reanalysis" of the 15-year-old testing (and some data from California and Massachusetts since those states adopted standards), perchlorate isn't found in enough water systems at a level above EPA's conveniently high new "safe" levels to trigger a need to regulate. The agency did not analyze how many water systems across the country exceed a lower threshold such as 2 to 6 ppb, though its previous data set would suggest that millions of Americans may be unknowingly drinking water exceeding those levels.

Reactions of the American Academy of Pediatrics and state and Tribal authorities

The president of the American Academy of Pediatrics filed a letter with EPA in 2019 when the agency hinted in its proposal that it was considering several options for a standard, including possibly revoking its finding that a perchlorate standard is needed, stating:

"AAP is particularly concerned that EPA is considering withdrawing its 2011 determination to regulate perchlorate, relinquishing national oversight over a chemical with well-established health risks in drinking water. This would set a precedent inconsistent with EPA's stated mission to protect public health. AAP urges the EPA to set a stronger MCLG [maximum contaminant level goal] for perchlorate that is based on all available evidence of potential harms to protect public health. A lower MCLG will allow EPA to generate reporting data that more accurately portrays the populations at risk and to better protect vulnerable populations."

Several state and Tribal government experts also weighed in with EPA, urging a far stricter standard:

California, which is considering reducing its standard from 6 ppb to 1 ppb, was highly critical of EPA's supposed reassessment of the science, stating it is "unreasonable not to consider neonates or young infants as an important susceptible subpopulation," and critiquing the decision to allow an average 2 percent IQ loss as acceptable.

Massachusetts, which has adopted a 2 ppb standard to protect vulnerable infants and fetuses, also objected, stating that the state "does not support U.S. EPA's proposed options for addressing perchlorate in drinking water, which are likely to allow for significant adverse public health impacts." The state suggested that, based on traditional EPA analyses, an appropriate standard would be 1.9 ppb.

New Jersey, whose experts proposed a 5 ppb standard, stated: "The decision to use a predicted decrease in children's IQ of 2 percent as the basis for the perchlorate MCL [micrograms per liter] does not appear to be well supported or protective of public health. It should be noted that this decision was not reviewed by the peer reviewers of U.S. EPA's approach for the risk assessment of perchlorate." The state noted that, using traditional EPA assumptions and analysis, a standard of 8 ppb would be called for.

New York also was critical of EPA, noting that the agency's own Clean Air Scientific Advisory Committee has recommended a 1 percent IQ loss as significant, and that EPA's proposal fails to adequately consider protections needed for infants, for example.

Similarly, Tribal authorities expressed their alarm. For example, the Salt River Pima-Maricopa Indian Community in Arizona noted that while even 18 ppb, the lowest standard EPA was considering, "may be

attainable for most public drinking water systems, it does not make that a safe number....There are numerous states that have already adopted lower limits..." The Tribe went on to note:

"Withdrawal of regulation will only encourage the industry to abandon any preventative measures to contain current contamination....The community, and similarly, other Tribal nations, rely on the EPA requirements and standards to support our efforts to keep Tribal waters safe from environmental health hazards. The agency's guidance/regulation may also help Tribal nations enforce possible contamination in the absence of existing local environmental rules and regulations (which could take some years to achieve). Native American communities already have a higher diabetes prevalence....Having diabetes prevalence and possible exposure to perchlorate, which affects the thyroid, would only place the community at a higher health disadvantage. Furthermore, Native American communities may not always have the resources to provide proper medical assistance and already experience environmental injustice...based on where reservations are located. In conclusion, it is in the best interest of the community and its members to expect and follow the most stringent and protective drinking water regulations in order to protect a health-wise vulnerable population."

A 2011 study of dozens of state perchlorate standards/action levels for drinking water (or for cleanup of groundwater that is expected to be used for drinking water) found that the vast majority of them were at or substantially below EPA's supposedly "safe" level of 56 ppb.

So why would EPA refuse to set a standard for perchlorate?

When EPA was first considering establishing a drinking water standard for perchlorate in the early 2000s, documents NRDC obtained through litigation under the Freedom of Information Act revealed that the DOD and its contractors mobilized a massive campaign to stop the agency from moving forward. They succeeded in buying time by getting the National Academy of Sciences to conduct a study, helping to craft the crucial charge questions to NAS and seeking to stack the panel. Indeed, a consultant of one of the biggest DOD perchlorate polluters, Dick Bull, was placed on the panel despite NRDC's providing evidence to NAS showing his recent pay from the industry. While Bull eventually left the panel, at least one other committee member also had apparent conflicts.

Despite this, the final NAS report in 2005 recommended a reference dose (0.7 micrograms per kilogram of body weight) upon which EPA based its 2008 health advisory of 15 ppb. Subsequent studies and analyses have indicated that an even stricter standard for perchlorate is needed, which is what states such as California, Massachusetts, New Jersey, and New York, the American Academy of Pediatrics, and others have relied upon to make their determinations.

Despite this new evidence, the DOD and an army of industry opponents to a strict drinking water standard have succeeded in shutting down the process. Industry advocates, including the American Chemistry Council (the chemical industry trade association), the Perchlorate Study Group (large industrial manufacturers and users of perchlorate, mostly DOD contractors), and industry "hired gun" scientist consultants like Gradient, have all been pressing EPA to not set a standard.

The American Water Works Association (AWWA), the water utility industry's biggest trade association, recommended for years that EPA set a perchlorate standard for drinking water. For example, AWWA said in a July 2, 2007 letter to EPA, "Building upon our position previously communicated to EPA in letters on February 2, 2005, and May 27, 2005, we recommend that EPA now make the decision to regulate perchlorate. AWWA believes that EPA has enough information to make a positive regulatory determination, and then to move forward with a proposed perchlorate regulation consistent with the requirements of the Safe Drinking Water Act." In further analysis, the AWWA found in 2013 that "National compliance costs for a perchlorate MCL ranging from 2 to 24 [ppb] is smaller than estimated compliance costs for other drinking water regulations....The relatively low national compliance costs reflect the small number of public water systems (PWSs) expected to be affected by a potential MCL of 4 [ppb]." However, AWWA has now changed its tune

and joined the bandwagon with its industry allies, filing comments in 2019 that oppose setting a standard for perchlorate.

Conclusion

EPA's cynical decision to defy a court order and the law, and to ignore the science that, as the American Academy of Pediatrics has said, dictates a strong perchlorate standard to protect vulnerable kids, is a deeply disturbing violation of the agency's mission. It must be reversed.

ERIK D. OLSON

Senior Strategic Director, Health and Food, Healthy People & Thriving Communities Program

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The Hill

<https://thehill.com/policy/energy-environment/overnights/497873-overnight-energy-epa-wont-regulate-rocket-fuel-chemical>

EPA won't regulate rocket fuel chemical tied to developmental damage: NYT

By Rebecca Beitsch

May 14, 2020

THE RULE THAT WASN'T: The Environmental Protection Agency (EPA) will not set a limit on a chemical used in rocket fuel that has been linked with brain damage, The New York Times reported Thursday, though the agency said it has not yet made a final decision on the rule.

The EPA in May 2019 proposed limits for perchlorate in drinking water that critics said were 10 to 50 times higher than what experts recommend.

A court order required the EPA to set a new perchlorate standard by June, but according to the Times, the agency plans to send a rule to the Office of Management and Budget arguing any regulation of the substance is unnecessary.

"The agency has determined that perchlorate does not occur with a frequency and at levels of public health concern, and that regulation of perchlorate does not present a meaningful opportunity for health risk reduction for persons served by public water systems," the draft policy reads, according to the newspaper.

An earlier proposal from the agency suggested placing the maximum contaminant level at 56 parts per billion (ppb), up from the 15 ppb proposed under the Obama administration.

Some states have their own regulations on perchlorate that fall as low as 2 ppb. The substance is naturally occurring but has also leached into water through military use. It's commonly found in solid rocket propellants, fireworks, matches and signal flares.

"The science on perchlorate is very clear: It harms infants and the developing fetus," Olga Naidenko, senior science adviser for children's environmental health at the Environmental Working Group, said when the EPA unveiled its proposal last May.

“Perchlorate can cause irreparable damage to both cognitive and physical development. Instead of taking action to lower the levels of this rocket fuel chemical in drinking water, the administration’s plan will endanger the health of future generations of kids.”

The EPA said it has not yet decided how to proceed with regulating perchlorate.

“The agency has not yet made a final decision and any information that is shared or reported now would be premature, inappropriate and would be prejudging the formal rulemaking process. The next step in the process is to send the final rule to the Office of Management and Budget for interagency review. The agency expects to complete this step shortly,” the agency told The Hill by email.

A release from the agency sent just minutes after the Times story was posted argued that partnerships between the agency and states has helped reduce perchlorate levels.

Read more on [perchlorate here](#).

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New Jersey Spotlight

<https://www.njspotlight.com/2020/05/senate-votes-to-extend-permits-for-projects-that-were-halted-by-covid-19/>

Senate Votes to Extend Permits for Projects that Were Halted by COVID-19

Opponents are concerned the legislation would cover older projects that could cause flooding, other environmental damage

By Tom Johnson

May 15, 2020

The Senate gave final approval yesterday to legislation that would extend permit approvals for projects derailed by the COVID-19 pandemic, a tactic lawmakers have favored in the past during prior economic downturns.

The bill ([A-3919](#)) won unanimous approval without any debate despite opposition from many environmental groups. The permit extensions would include those for land use, wetlands, stream encroachment, water quality, coastal and other uses. The measure had backing from most business interests, including the New Jersey Builders Association and New Jersey Chamber of Commerce.

In voting for the legislation, the Senate chose to back the Assembly version of the permit extension bill instead of its own. The Senate bill was viewed as less expansive in granting extensions for much older projects, under amendments worked out with the Governor’s Office.

“They took the worst of the two bills,” said Jeff Tittel, director of the New Jersey Sierra Club. He said the organization would press Gov. Phil Murphy to veto the bill. “If signed into law, there will be no room for the public to comment on these extensions.”

Approved projects could move forward

Proponents argued the bill would help restart the economy by not unnecessarily delaying projects that had already won permit approvals from state, county and local authorities, but had been blocked from moving forward because of a halt ordered by the governor on all nonessential construction.

“Work has been frozen,” said Sen. Anthony Bucco (R-Morris), a co-sponsor of the bill, in a statement. “The economy was stopped in its tracks by strict social distancing orders to slow the spread of the virus. Extending permits during the state of emergency will prevent important, already-approved work from being abandoned.”

Tittel argued the state should be extending permits for some projects, but said this bill is too broad and will extend bad permits and projects that will cause more damage by increased flooding.

Business groups countered the approvals all were done in accordance with existing environmental rules. “This bill in no way does not degrade environmental standards,” Michael Egenton, executive vice president of the New Jersey Chamber of Commerce, told legislators last week.

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Virgin Islands Daily News

http://www.virginislandsdailynews.com/news/mask-wearing-crucial-to-preventing-covid-19-spread/article_0cf03fc7-26df-51ea-978f-04dc27699e56.html

Mask wearing ‘crucial’ to preventing COVID-19 spread

By Suzanne Carlson

May 15, 2020

Territorial Epidemiologist Dr. Esther Ellis implored Virgin Islanders to properly wear face masks — regardless of how uncomfortable they might be.

“It is crucial that you always wear one in public spaces when you’re around people you do not live with,” Ellis said during Gov. Albert Bryan Jr.’s press conference Thursday.

The Virgin Islands Health Department is currently monitoring only two known cases of COVID-19, and Ellis said proper mask wearing is essential for keeping that number low.

“No one really likes wearing a face mask, but it is a requirement to enter any business in the Virgin Islands. There are ways to use a mask safely,” Ellis said.

She said Virgin Islanders should practice wearing a mask at home to get comfortable with the sensation, and urged residents to avoid going out in hot, humid weather, and take a break and catch their breath if they feel faint while wearing a mask.

N95 masks, which can be more difficult to breathe through, should only be worn by medical professionals who are in contact with patients, Ellis said.

Children under the age of 2 and individuals with respiratory ailments like asthma and chronic obstructive pulmonary disease, or COPD, are not bound by Bryan’s mask order, but Ellis said some individuals are taking advantage of that exception.

There are individuals “claiming to suffer those conditions to avoid using a mask,” and Ellis said lying about your health conditions only puts others at risk, and makes it more difficult for people with real ailments to be taken seriously by business owners.

Moment of silence for family

To date, six people have died of COVID-19 in the Virgin Islands, including three members of the same family — a mother, father, and their 45-year-old son — and Bryan asked for a moment of silence in their honor.

“Half of all our COVID deaths, three out of six, are related to this one single family,” Bryan said. “This was an unimaginable tragedy.”

The government is currently tracking two known active cases, and 1,278 individuals have been tested.

Of those, 1,164 of those tests were negative, 69 were positive, 61 have recovered, and 45 tests are pending.

No COVID patients are being treated at Luis Hospital on St. Croix, and only one — a sailor who was allowed to disembark from a ship for emergency treatment — is currently being treated at Schneider Hospital on St. Thomas.

That individual is on a ventilator but is “doing really well,” and there have been no other new cases of COVID-19 reported on St. Thomas in over two weeks, Bryan said.

V.I. Territorial Emergency Management Director Daryl Jaschen said the agency is operating as a “unified command” with FEMA, the Health Department, and 40 other territorial and federal agencies.

The unified command will conduct a tabletop exercise today to discuss ways to prepare emergency evacuation and mass care shelters for the upcoming hurricane season while also maintaining social distancing requirements to prevent the spread of COVID-19.

Stimulus checks, WAPA credits

Bryan said that stimulus checks began going out Monday, and that as of Thursday, 2,595 checks totaling \$3.9 million had been sent out.

Today, an additional 3,676 checks totaling about \$6 million will be sent out, and “everybody who is entitled to a COVID stimulus check, every single person who is entitled to this check is going to get it,” Bryan said.

Bryan also said an assistance center will be opened to help individuals fill out a 1040 tax form for 2018 in order to help them receive a stimulus check more quickly.

“It only requires basic information, but we realize printing resources and the fear of coming into offices may be a hindrance to people getting through this process,” Bryan said.

Credits to V.I. Water and Power Authority customers began on May 7. To date, 6,046 residential customers received a \$250 credit, and 1,654 commercial ratepayers received a \$500 credit, and Bryan said all WAPA customers will receive a credit by the end of the month.

Unemployment

In terms of unemployment, the Labor Department has received 8,074 unemployment applications since April 7, and 5,168 have been converted into new claims, Bryan said. 4,672 checks totaling more than \$3.3 million have been issued.

Bryan said that almost twice the number of claims processed in a typical year have been processed in the last 60 days.

An additional \$600 weekly sum through the Federal Pandemic Unemployment Assistance Program is scheduled to be implemented next week, and those funds are retroactive to April 4 and will continue weekly until July 31, Bryan said.

While the cap on claimed benefits is \$480, “individuals can now receive up to \$900, \$950 a week — this is incredible. And this is being brought to us certainly by the work the Delegate is doing in Congress,” Bryan said, referring to V.I. Delegate to Congress Stacey Plaskett.

The Labor Department is also working to roll out Pandemic Unemployment Assistance program for self-employed individuals to access economic relief, and raised the cap on maximum weekly benefit amounts to \$600, so “some people will be getting as much as \$1,200 per week,” Bryan said. “That may be a lot more money than some people make in a regular week, but once your employer opens up, you’re obligated to go back to work, you can’t sit and collect the money.”

The program expires in four months, but Bryan said “they’re thinking about extending that through the end of the year.”

To report a suspected COVID-19 case or to be tested for the disease, call 340-712-6299 or 340-776-1519. For more information, visit the Health Department on Facebook or at doh.vi.gov.

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Poughkeepsie Journal

<https://www.poughkeepsiejournal.com/story/news/local/2020/05/14/hudson-river-housing-receive-25-k-assistance-epa/5191707002/>

Hudson River Housing to receive \$25K in assistance for Poughkeepsie Underwear Factory

By Geoffrey Wilson

May 14, 2020

Hudson River Housing will be able to add food production and processing to the Poughkeepsie Underwear Factory thanks to assistance from the U.S. Environmental Protection Agency.

The EPA will provide \$25,000 in assistance for Hudson River Housing through its Local Foods, Local Places program. The initiative is meant to allow communities to sustainably develop their local food economy, according to a release from the EPA.

Hudson River Housing was one of 16 recipients nationally benefiting from the program.

"The Trump Administration is committed to helping communities develop and strengthen their local food economy by investing in opportunity zones," said EPA Administrator Andrew Wheeler. "Support for local food initiatives will improve access to fresh foods, support our local farmers and grow new businesses, all of which lead to happier and healthier communities."

This assistance will go toward the creation of a food processing center to the Poughkeepsie Underwear factory, adding to its existing open kitchen. This would allow for the creation local jobs in the region's food industry.

The program will also include a community workshop, tentatively scheduled for later this year and depending on the impact of COVID-19. This workshop will bring Hudson River Housing with stakeholders in downtown Poughkeepsie to explore local needs between farmers, food producers and the community.

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New York Post

<https://nypost.com/2020/05/14/mta-weighs-reserved-seating-for-subways-buses-when-lockdown-ends/>

MTA weighs reserved seating for subways and buses when lockdown ends

By David Meyer and Vincent Barone

May 14, 2020

The MTA is mulling reserved seating for subways and buses to ensure social distancing once New York begins reopening.

MTA Chairman and CEO Pat Foye said the idea is among several strategies the authority is kicking around to keep commuters and transit workers safe post-coronavirus lockdown.

“In that scenario customers, at least for some period of time, would be asked to make a reservation,” he said during a [CRAIN’s New York Business panel](#) Thursday.

“That is not something we’ve made a decision on; we’re not close to making a decision.”

The reservation system would have to use the MTA’s new and still limited OMNY payment system in conjunction with “Ticketmaster technology,” Foye added.

Foye acknowledged the incredible logistical hurdles to making such a system work, but wanted to float the concept to show the MTA is exploring all options — “everything is on the table,” he said.

“Obviously, a reservation system would have all sorts of complications here in New York, given 472 [subway] stations and, pre-pandemic, millions of passengers,” he said.

Transit advocates doubted reservations would be a workable solution.

“How would it work to reserve a seat on a subway train?” asked Ben Fried, a spokesman for TransitCenter.

“I think there could be a version of it at some of the biggest stations, where there’s some sort of monitoring of how crowded conditions are inside ... but I think that would only be workable at certain stations.”

Fried believes employers will have to play a role in staggering hours or gradually bringing their workforces back to make sure trains and buses remain comfortably full.

“Unless you have people staffing every door of the train, I just don’t believe you’ll be able to control individual movements like that,” he added.

Foye reiterated that the MTA’s top concern at the moment is securing more federal funding to make the agency whole after the pandemic [decimated public transit ridership](#).

“Increasing transit service when the government begins to lift New York on PAUSE downstate is going to be incredibly important to the recovery of New York City and the New York City region. It can’t happen without robust and reliable and safe service by the MTA,” Foye said

“The regional economy’s and frankly the national economy’s recovery will be slowed and stunted if the MTA doesn’t get federal funding ... but also if we’re not able to restore service in the way I just described,” he said.

Once the city does get moving again, Foye envisions a transit system where masks are mandatory for workers and riders. MTA employees will have to get their temperatures checked daily and in-station cameras will be used to monitor subway crowding levels, he said.

Cleanings will have to be intensified.

“There is no single step to it,” he said. “It is going to be a multiplicity of actions taken which will involve innovation and technology.”

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El Nuevo Dia

<https://www.elnuevodia.com/noticias/locales/nota/aespuertoricoposponemantenimientodeunidadesdebidoalapandemia-2568639/>

AES Puerto Rico postpones unit maintenance due to pandemic

At the plant in Guayama, there are 110,000 tons of ash accumulated outdoors

By Gerardo E. Alvarado León

May 14, 2020

The COVID-19 pandemic forced cogeneration plant AES Puerto Rico to postpone, for the second time this year, the maintenance of its two units, which produce 15% of the energy on the island by burning coal.

Jesús I. Bolinaga, director of the Caribe Complex of AES, indicated that, in principle, the maintenance of the two units was scheduled for January, but it was not done due to the earthquake . In coordination with the Electric Power Authority (PREPA), it was then moved to April 18.

"But, once the pandemic had entered, we met with the Authority again to guarantee them electric power and we proposed that they extend the maintenance a little, which will now be done in June and July ," Bolinaga said in an interview with El Nuevo Día. .

"In this way, not only do we guarantee that citizens can count on energy in this period, but we also enter the hurricane season with the two machines with their maintenance up-to-date, so that we can support if any problem arises with a storm" he added.

The two units of AES Puerto Rico have a total capacity of 454 megawatts.

110,000 tons of ash

On the other hand, Bolinaga explained that at the AES Puerto Rico plant in Guayama, there are currently 110,000 tons of ash - light and heavy - accumulated outdoors.

This amount is equivalent to the coal combustion residues generated in 120 days of operation. By law , the cogenerator cannot exceed an accumulation equivalent to 180 days of operation.

"We are complying with the law," Bolinaga said.

He said that, to ensure the disposal of the ashes, AES Puerto Rico signed long-term contracts with companies that collect the material and take it off the island by boat. That task has been maintained during the pandemic , and "we are complying with the protocol of (the Authority of) Ports ."

“The crew cannot get off the ships. As part of medical protocols, ships have to report to us, before setting sail here, the state of health of their people. Only in this way do our employees enter the ships, ”he explained.

He added that AES Puerto Rico "increased the carbon inventory" to guarantee the continuity of its operation. The coal used by the plant is imported from Colombia.

Reject allegations

Bolinaga denied, meanwhile, that AES Puerto Rico is not complying with its reporting and monitoring obligations, despite the fact that the federal Environmental Protection Agency (EPA) relaxed these rules due to the pandemic.

"Relaxing the EPA does not mean that companies can relax their standards. Our emissions are monitored by 'software'. That has a record that is taxed, regardless of the pandemic. We are obliged to comply with all environmental standards," he said.

On March 26, the EPA issued a memorandum in which it informed that it will not impose sanctions on companies - public or private - that demonstrate that, due to COVID-19, they cannot carry out routine monitoring, integrity tests, sampling, laboratory analysis, training and certification reports. This new standard was approved retroactively to March 13 and, for now, has no completion date.

Days after the EPA's determination, residents of the communities surrounding AES Puerto Rico reported "strong chemical odors" allegedly coming from the plant. Citizens filed a complaint with the EPA and the Department of Natural and Environmental Resources, which investigated and could not confirm the allegations.

"We have all the reports up to date. Some have not been able to submit because they require office staff to work, but we continue to operate under normal conditions. We do not have anything that is out of the normal and habitual operation", he stressed.

Bolinaga highlighted that, to improve communication with the surrounding sectors, AES Puerto Rico hired a "social manager" a year ago. He said that person keeps in touch with neighbors through a group in the WhatsApp messaging application.

"We have made an effort to be close to them because we understand that in no way can our operation affect the communities. That is not our philosophy of work. If the communities are affected by anything, we take awareness and the necessary actions to attend to it," he declared.

No positive cases

Bolinaga mentioned, finally, that -up to now- there are no positive cases of COVID-19 among the cogenerator's employees.

"All non-essential staff are at home teleworking. Regarding the operational personnel, which are four shifts of 12 hours each, we have them completely isolated. They arrive at the plant and go directly to their work areas; they have no contact with other personnel," he said.

He noted that the company prepared to establish "camps" at the plant, for which it acquired "trailers" equipped with bathrooms and beds. However, it was not necessary to activate them.

"Before entering the plant, each employee has their temperature measured and everyone wears a mask. In addition, we give freedom to everyone who feels bad not to go to the office, but to the doctor we have hired, who determines if they send them to do a mycoplasma, influenza or COVID-19 exam, so that we can isolate all the cases. If someone in the house of an employee had contact with a positive, we also isolated it," he stressed.

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Queens Chronicle

https://www.qchron.com/editions/queenswide/flood-control-work-in-progress-in-s-queens/article_8de56bd2-c25a-50cd-8808-f416efdf212e.html

Flood control: work in progress in S. Queens

By Michael Gannon

May 14, 2020



A resident on Centreville Street in Ozone Park put that question to the Chronicle two weeks ago as he exited his house in a rainstorm, with flooding on the west half of the road so bad it pooled up over the grass median and sidewalk, ending at the front steps to the man's home.

Less than two blocks to the south, the water from the street overflowed onto an asphalt sidewalk bordering the Al Stabile Playground.

While the playground is closed under city and state COVID-19 restrictions, the water went right up to the fence and had begun pooling underneath a swing set.

The area traditionally has had poor drainage, but a good deal of work is being done in the general area.

Several blocks to the south there were sewer and drainage projects on multiple streets in various stages of completion.

A spokeswoman for Councilman Eric Ulrich (R-Ozone Park) said in an email that the park is on his agenda.

"Councilman Ulrich is funding upgrades to the playground in a capital project and is collaborating with the Parks Department to ensure flooding concerns are addressed in the design," she said.

Almost directly to the south of the park as the crow flies, there is an ongoing storm sewer project on 95th Street in Howard Beach — which sits on the eastern bank of Shellbank Basin.

When completed, according to the city's Department of Design and Construction, there will be new storm sewers on 95th Street between 160th and 162nd avenues. The problem, according to a resident who requested to

remain anonymous, is that the project may stop one block too soon to alleviate flooding in front of homes between 160th and 159th avenues. The DDC oversees major city construction projects.

“We have the worst flooding in the neighborhood that isn’t being addressed,” said the resident, who has been told by officials that there is not yet another project in the works.

The Chronicle reached out to the DDC and the city’s Department of Environmental Protection to determine, among other things, if the ongoing project on 95th Street has been engineered to take flooding to the north into account and alleviate it.

The DDC, replying at the end of last month by email, restated the specifications of the ongoing project. DEP officials could not be reached for comment this week prior to the Chronicle’s deadline on Wednesday.

Ulrich’s office said in the case of Old Howard Beach that the councilman is working continuously with the DEP to deal with flooding issues throughout his district.

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Patch

<https://patch.com/new-york/parkslope/gowanus-green-spaces-vital-during-coronavirus-conservancy>

Gowanus Green Spaces Vital During Coronavirus: Conservancy

By Matt Troutman

May 14, 2020



GOWANUS, BROOKLYN — Don't let the coronavirus pandemic stop the Gowanus Canal's transformation from industrial wasteland to vital city green space.

Ditto for other parks, open spaces, tree plantings, stewardship programs and more across New York City.

That's the message an assortment — a bouquet, if you will — of city parks leaders sent Thursday during a virtual news conference. Parks are always critical infrastructure, but they're more necessary than ever as New Yorkers spend their days cooped up and socially-isolated, they argued.

"Through this pandemic, our parks, natural areas, street trees and gardens are essential infrastructure," said Andrea Parker, executive director for the Gowanus Canal Conservancy. "They provide New Yorkers with comfort, connection, exercise and respite. They are open to all at a time we need them most, but this use necessitates increased maintenance at the same time that current operations are scaled back, existing crews are over-extended and the city budget is facing dramatic cuts."

Roughly half of New York City parks and natural areas maintained by groups like the Gowanus Canal Conservancy anticipate at least \$37 million in lost revenue from the outbreak, according to [a recent COVID-19 impact report](#).

Those groups plan to form a "NYC Green Relief & Recovery Fund" to help support nonprofit and grassroots organizations caring for those spaces, a release states. They also called for the city to step up to support the groups.

"We simply cannot go back to the bad old days of parks when they were unsafe, unkempt and unwelcoming," said Daniel Garodnick, president and CEO of the Riverside Park Conservancy, on the call.

The "bad old days" in the 1970s prompted not-for-profits to step up and help raise money to support park crews, maintenance and programs. Parker said the Gowanus Canal Conservancy, founded in 2006, is relatively new on the scene, but it has supported programs that are helping the canal turn around from its status as one of the most polluted waterways in the country.

"This stewardship includes parks, but it also includes street trees, bioswales and the shoreline itself," she said.

The group's park report also detailed how [Prospect Park could face impacts](#) on horticultural care, free programs, public safety measures, park maintenance and new improvement projects if revenue losses from the coronavirus crisis aren't covered.

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E&E News PM

<https://www.eenews.net/eenewspm/2020/05/14/stories/1063136513>

EPA won't set perchlorate limits

By Ariana Figueroa and Hannah Northey

May 14, 2020



EPA will not set drinking water limits on perchlorate, a chemical linked to fetal and developmental brain damage, according to multiple sources.

Sources who confirmed the development said they were told about the decision by agency staffers or were read copies of EPA's decision over the phone.

The rule is tied to a **proposal** EPA issued last year, which sought to allow perchlorate in drinking water to reach concentrations 10 times higher than standards set by states and three times higher than the agency's own reference level (*Greenwire*, May 24, 2019).

In that proposal, EPA recommended setting a maximum contaminant level and health-based maximum contaminant level goal of 56 parts per billion for perchlorate — a rocket fuel ingredient that has been linked to thyroid problems, among other health issues.

Regulating perchlorate would require 60,000 public water systems to monitor for it, but under the 56 ppb proposal, only two systems would "exceed the regulatory threshold," EPA wrote.

EPA said at the time it was one reason the agency was asking the public whether it should regulate perchlorate at all.

Erik Olson, the Natural Resources Defense Council's senior strategic director of health and food and a former EPA staffer, said he expects the agency to send the rule to the White House Office of Management and Budget tomorrow.

The New York Times first reported that EPA would suggest to the White House that it does not need to regulate perchlorate, though a statement provided by EPA said a decision has not been made.

"EPA is continuing to work on the final action regarding the regulation of perchlorate in public drinking water systems," the statement said. "The agency has not yet made a final decision and any information that is shared or reported now would be premature, inappropriate and would be prejudging the formal process."

The agency said the next step is to send the final action to the Office of Management and Budget for interagency review, adding, "The agency expects to complete this step shortly."

Olson said the NRDC is looking at a legal response because it **believes** EPA's decision to not set maximum contaminant levels for perchlorate defies a court order requiring the agency to establish drinking water limits on the chemical.

"We think they're violating the court order, so we're looking at our legal options," Olson said.

In a 13-page **fact sheet**, EPA argues its new analysis of perchlorate concentrations has found that the presence of the chemical has decreased in water utilities.

"The EPA finds that perchlorate levels in drinking water supplies have declined since the EPA published a final determination to regulate perchlorate in 2011," according to EPA's analysis.

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El Nuevo Dia

<https://www.elnuevodia.com/noticias/locales/nota/laimplementaciondesistemasderastreorevelaincongruenciasen datosdesaludylosmunicipios-2568805/>

The implementation of tracking systems reveals inconsistencies in health data and municipalities

Little by little, municipal systems have been put in place due to differences in the number of infections identified at the central level

By Marga Parés Arroyo

May 14, 2020

The municipalities that have adopted COVID-19 case tracking systems - given the deficiencies of the central government in this management - have identified inconsistencies between the data handled by the Department of Health and the cases detected at the municipal level .

More and more municipalities are using the initiative that Villalba started with a system that identifies, monitors and assists people infected with this disease , as a tool to stop the transmission chain and control the spread of the virus .

"We are working to integrate into municipal tracking systems, but we have a local system, with a table of positive cases. We have 23 unique cases, 11 recovered, 11 active (to the virus) and one death, "said the mayor of Cabo Rojo, Roberto Ramírez Kurtz , who indicated that only in two of its nine neighborhoods (Bajura and Llanos Costa) have they identified any cases .

"The Health tables, sometimes, lack information, they just (have) the name. Here, we identify the cases. In the towns, we know each other and, with a lot of respect and confidentiality, we began to work with the person, to give him support, "he indicated.

In Gurabo, with an internal case-tracking system run by municipal employees, they have identified 35 positive cases, although not all to the diagnostic test, but to the antibody test.

" I am seeing inconsistencies in the data that Salud sends me. Much remains to be done. Real assistance is needed in the municipalities, "said Mayor Rosachely Rivera , who commented that she will contact the Villalba epidemiologist, Fabiola Cruz , as she is interested in implementing the case tracking model in her municipality.

Arroyo Mayor Eric Bachier explained that they recently hired an epidemiologist to develop a case-tracking system. With an internal mechanism that they created, he said, they have already identified discrepancies between their numbers and those of Health, because while the agency reports eight cases, the municipality has four.

"There is a dislocation because they put (contagions from this municipality) on people who do not live in Arroyo. It is essential that the municipalities have control of where the infections are, "he reiterated.

For the mayor of Hormigueros, Pedro García , it is logical that the municipalities direct the tracking of cases of this virus, due to the trust that exists between the people of Puebla and the possibility of receiving help from the municipalities promptly.

"The idea is that all municipalities help the State to identify infections and possible infections, and this does not spread," he said, commenting that today they will hire a retired epidemiologist who will help them in this effort that, until now, internally. , has registered 11 infections.

In Trujillo Alto, the COVID-19 Response Program will integrate, on May 18, a case tracking system that will last six months. According to the mayor José Luis Cruz, this town has 49 cases, some notified through its telephone line 787-760-4440.

"The problem is that the State has not been responding. The important thing is that we are united. It is a matter of starting, and if we receive funds, perfect, because this is the most important thing now, monitoring," Cruz said.

In Ponce, meanwhile, they will start a case tracking system today that will have the experience of epidemiologist Karla Marie López de Victoria Cancel.

In written statements, the mayor of Ponce, Maria "Mayita" Meléndez , reported that the model is similar to that of Villalba, but with some variations when considering its population of 130,000 inhabitants, among whom 62 cases and one death have been identified, numbers that they do not coincide with Health, which recognizes 63 cases. The Mayor invited people who test positive for the virus to call 787-843-7286.

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El Nuevo Dia

<https://www.elnuevodia.com/noticias/locales/nota/eldepartamentodesaludrecibeelantiviralremdesivirparatratara-pacientesdecovid-19-2568799/>

The Department of Health receives the antiviral remdesivir to treat COVID-19 patients

Dr. Lorenzo González, head of the agency, commented that the medicine arrived on Tuesday in a limited way because the quantity supplied is only enough to serve 36 people.

By Marga Parés Arroyo

May 14, 2020 (updated)

The Department of Health received last Tuesday, the drug remdesivir , antiviral recently received authorization from the Federal Administration Food and Drug Administration (FDA, for its acronym in English) for emergency use in adults and children hospitalized with diagnosis COVID-19 .

In written statements, the agency confirmed tonight that the federal Department of Health and Human Services notified it that the antiviral would be distributed among the states and territories.

Lorenzo González Feliciano , head of Health, commented that the medicine arrived on Tuesday in a limited way, since the quantity supplied is only enough to attend to 36 patients. El Nuevo Día learned that patients urging this medication should receive several doses as part of hospital treatment.

According to González Feliciano, the Division of Medicines and Pharmacy of the Auxiliary Secretariat for Regulation and Accreditation of Health Facilities (Sarafs) developed an application form so that interested hospitals can acquire it.

"We are in the final process of reviewing the procedure and the documentation required to have the endorsement of the Hospital Association and the associations of infectious diseases and pneumologists of Puerto Rico and thus begin their distribution," said the official.

He reiterated that the treatment will be available to patients who require it and are hospitalized, under the supervision of infectious diseases and pulmonologists, and at no cost to patients.

For his part, the infectologist at the Auxilio Mutuo Hospital, Miguel Colón, maintained that Salud received 400 doses of the drug, a figure that the agency did not confirm, and that the drug stores should be distributed to serve as liaisons with the hospitals.

" This drug is designed for patients with moderate to severe disease, but does not lower mortality, but the days of hospitalization. It is for patients with less than 94% saturation or who need oxygen. We are going to give it to patients early to save lives, "said Colón.

Colón warned that, after FDA approval, the federal government was asked to distribute the drug in all US jurisdictions. For this reason, some arrived in Puerto Rico. "It is the only thing approved by the FDA right now (for COVID-19)," he said.

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NATIONAL

5 ways to go green during the pandemic

<https://www.cnn.com/2020/05/14/health/recycling-pandemic-wellness/index.html>

By Katia Hetter and Ryan Prior

(CNN) — Recycling isn't just for the environment anymore.

It's becoming an economic imperative, and you could even consider it your patriotic duty.

So says the top environmental officer of the United States, who urged Americans to help fight a worldwide pandemic by recycling the packing materials from their delivery orders.

With so many people creating waste at home, recycling is "more essential than ever right now," said U.S. Environmental Protection Agency Administrator Andrew Wheeler in [the video](#). "Right now there is a critical need for all raw materials in the manufacturing supply chain, especially paper and cardboard."

Groups in [the UK](#) and [Europe](#) have also warned of possible shortages of cardboard as a result of increased home deliveries. With many businesses shuttered and unable to recycle that means it's more important that households do their part.

Americans recycled 66% of the paper they used in 2017, [according](#) to the EPA, but only 8.4% of plastics were recycled that same year.

Here are five ways to be nice to the planet, reduce waste and support efforts to ship you all the things you need (and want).

1, Recycle paper and cardboard

If you're doing more online shopping, cardboard boxes could naturally be piling up. Take action from home by breaking down your boxes and putting them out for curbside recycling or taking them to a nearby recycling center (observing social distancing of course).

Simple actions like this can help ensure the "manufacturing supply chain will remain open and vibrant," Wheeler said. "That in turn will help keep grocery stores and homes stocked with the essentials needed during this public health emergency."

2. Reuse disposable bags

Is your stack of reusable bags stuffed in a closet somewhere? Grocery stores are delivering their groceries in plastic and paper bags, all of which are piling up. It's fine right now to use them to line wastebaskets, pick up your dog's poop or fill them up with stuff to give away when our communities open back up safely.

3. Reduce takeout waste

While you're spending more time at home during quarantine, you're likely to be receiving more frequent deliveries of food from restaurants. So many takeout joints seem to be delivering plastic silverware and napkins to you at home. Ask them to stop, please. You're at home. Use your own silverware, and reduce your plastic waste.

4. Fewer canned drinks

We've said it before, but you're at home! There's no need to buy six packs of soda and seltzer water (we can make an exception for beer).

Buy those larger bottles of juice and soda, and get a seltzer water maker to make your own fizzy (add juice or shrubs or boozy flavors for fun). Even those beer cans and larger bottles are recyclable in many communities.

5. Start composting

One third of what New York City residents throw away is food and yard waste, and composting it diverts it from the city's landfills. If you live in cities like [New York City](#); [Portland, Oregon](#); or [San Francisco](#) or attend [Emory University in Atlanta](#) (when the campus is open), it's easy to compost.

You can also compost at home if you have space in your yard, but there are services for those can't or don't want to. [CompostNow](#) is one of many companies that pick up residential and commercial compost; its focus is Asheville, North Carolina; Charleston, South Carolina; and Atlanta, Georgia.

CompostNow will bring compost back to you, and it can fertilize all those herbs you're growing.

Stop with the PPE

We know you're using a lot of personal protective equipment, or PPE, to stay safe.

Just don't throw your masks, gloves, and wipes into the recycling during the pandemic -- or anytime.

Personal protective equipment is not recyclable, and it's not safe for sanitation workers to touch it once it's been used.

These items "should never go into the recycling bin," Wheeler said.

Instead, your medical waste needs to be bagged, sealed, disposed of in accordance with guidelines from the US Centers for Disease Control and Prevention's guidelines -- these items need to be thrown away in a trash receptacle.

That's a problem that Paul Zambrotta noticed while directing safety operations at Mr. T Carting in New York City. Last month he told CNN that he was seeing a surge in face masks, gowns, and other medical supplies winding up in recycling.

"You don't know who put it out. You don't know what's on it," he said. "We never used to see these things in the recyclable mix before."

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CNNPolitics

US seizes lanyards and other bogus products marketed as Covid-19 protection

<https://www.cnn.com/2020/05/13/politics/us-seizes-lanyards-covid-19-protection/index.html>

By Geneva Sands

(CNN) — Federal authorities are attempting to stop a wave of bogus and potentially dangerous products marketed to Americans to prevent the spread of coronavirus.

In recent months, US customs officials have seized thousands of unapproved lanyards, tablets and herbal medicines -- all part of a rush of supplies entering the US market during the pandemic.

Fraudulent and unapproved products have become a dangerous side effect of the effort to supply US consumers with personal protective equipment and medical supplies. Scammers were quick to take advantage of a new market and scared consumers anxious for a cure, several federal officials tell CNN.

"When you combine a stressed supply chain with a stimulus package, and weave in there the anxiety and the emotions of a public that is certainly scared and nervous about everything going on, it makes for a perfect storm for criminal organizations to take advantage and defraud people," said a Customs and Border Protection official at John F. Kennedy International Airport, speaking about recent seizures of unapproved products in the New York region.

Amid imports of counterfeit face masks and prohibited Covid-19 test kits, other unsafe items lacking the required Environmental Protection Agency or Food and Drug Administration approvals have also headed toward buyers.

Seizing unsafe items

Nationwide, the customs agency has made 63 seizures of the EPA-prohibited anti-virus lanyards and 51 seizures of FDA-prohibited chloroquine tablets, resulting in over 8,700 tablets and 2,261 lanyards seized as of May 1, according to a CBP spokesperson.

In recent months, the CBP's New York Field has office made 63 seizures of unapproved test kits and anti-body kits, for a total of more than 5,000 test kits, as well as 18 seizures of lanyards, amounting to over 400 products.

"Shut out" lanyards began to appear as early as February. Designed to be worn around the neck, they are coated with the chemical chlorine dioxide, according to a CBP official in Cincinnati. Officials were confused about the products at first, realizing later that "they were essentially just coated with pesticides," the official said.

They're being marketed as a solution to the virus, while taking advantage of the public's worries about the ongoing outbreak, according to several Department of Homeland Security officials. In recent days, CNN found similar products listed on Amazon and eBay.

The potential health hazards of these products have raised particular concern for officials working to speed the delivery of much-needed products while preventing fake, unauthorized and counterfeit goods from making their way to the public.

In March, the EPA warned against "Virus Shut Out" products, saying they had prevented several shipments of an illegal health product from entering US Pacific ports under federal pesticide laws. Products that claim to kill or repel bacteria or germs are considered pesticides and must be registered with the EPA.

To date, over 10,000 units of the "Virus Shut Out" product have been intercepted, according to the EPA. "The agency is concerned that consumers will rely on false claims that a product will protect against coronavirus, and that will increase the spread of Covid-19," an EPA spokesperson told CNN.

The premise is that you wear it around your neck and it keeps you from getting the virus, which is "completely, completely inaccurate and dangerous," said the Customs official in Cincinnati.

This particular chemical can be absorbed through the skin, can cause respiratory distress, as well as liver and kidney issues, said the official, adding "it's highly toxic."

Both eBay and Amazon tell CNN the companies are monitoring their sales platforms to find and remove products that make inaccurate claims about Covid-19. Amazon has blocked or removed more than 6.5 million products, according to a company spokesperson.

eBay is supporting the EPA's efforts to prohibit the sale of items making fraudulent health claims, spokeswoman Ashley Settle told CNN.

"The person purchasing this online has no idea what they're actually getting. And they're going off the promise that this is going to cure or prevent them from getting sick," said the Customs official. "These items serve no actual purpose."

Who's selling them?

In April, a Georgia resident was charged with illegally importing and selling an unregistered pesticide through eBay, claiming that it would help protect people from viruses, according to the Department of Justice. According to the criminal complaint, products marked as "Virus Shut Out" and "Stop The Virus" claimed to control viruses and bacteria.

Attorney for the defendant, Paul Kish, told CNN in part, "We support the role of government agencies in protecting consumers, and also support government investigations related to the pandemic," adding, "It appears that this is a situation where frightened people were simply trying to help themselves, their families and other like-minded individuals stay safe in these scary times."

According to Immigration and Customs Enforcement, which investigates seizures made by CBP, the majority of the products appear to be made in Japan, however, shipments from China, Germany, Hong Kong, Qatar and Taiwan have also been seized. ICE has also encountered clip-on magnets and cards that are marketed as antiviral products, according to agency spokeswoman Britney Walker.

In April, the FDA issued a warning letter to a seller marketing chlorine dioxide products known as "Miracle Mineral Solution" for prevention and treatment of Covid-19. The agency first warned about these products in 2010, but they are still being sold with misleading claims that they are safe and effective for the treatment of diseases, including for Covid-19, according to the FDA.

A week later, a federal court issued a temporary injunction requiring the sellers to "immediately stop distributing" the solution, which the FDA said was an "unproven and potentially harmful" treatment being offered to treat coronavirus.

CBP officials have also seized chlorine dioxide tablets designed to be dissolved in water. These tablets and chemicals have legitimate uses but can cause respiratory and other issues if used improperly, said the Customs official in Cincinnati.

"Our concern is with keeping it out of the hands of Joe Citizen, who doesn't know how to utilize it, doesn't know that it's toxic and dangerous," said the Customs official.

CNN's Brian Fung contributed to this story.

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Oil ports plead for funding in stimulus, water legislation

<https://www.eenews.net/eedaily/2020/05/14/stories/1063128111>

[Mike Lee](#), E&E News reporter Published: Thursday, May 14, 2020



The Houston Ship Channel, part of the sprawling Port of Houston. U.S. Coast Guard

Oil-exporting ports on the Texas coast are looking to Congress for continued funding to help them cope with the impact of the coronavirus pandemic.

Not only do the ports require regular funding from periodic water infrastructure authorizations, they could also use assistance in the next federal stimulus bill, said Sean Strawbridge, CEO of the Port of Corpus Christi Authority in Texas.

"There's always going to be demand for exports," Strawbridge said yesterday during an event to promote awareness of the state's energy ports.

Corpus Christi, in the southwest corner of the state, has become a key export location for the Permian Basin oil field. Houston, home to the country's third-biggest port, is also a major exporter of both crude and production from the area's massive petrochemical and refining complex.

The oil downturn has cut into shipping volumes around the state, which has cut into local ports' revenue. Corpus Christi's oil exports, for instance, dropped to 1.1 million barrels a day this month, from 1.8 million barrels a day in January, Strawbridge said.

Congress provided aid to airports in the \$2 trillion Coronavirus Aid, Relief and Economic Security Act to help offset the revenue they lost when air travel shut down.

The nation's seaports aren't faring as badly but could still use stimulus funds to offset the drop in shipping revenue, Strawbridge said.

The state's ports also need continued funding for dredging and other projects to help them expand, said Roger Guenther, executive director of Port Houston.

Texas' harbors are naturally shallow and require dredging to accommodate the largest classes of oceangoing oil tankers (*Energywire*, Feb. 27, 2019).

The Senate Environment and Public Works Committee approved its water infrastructure bill last week, and the House may release its version this month (*Greenwire*, May 6).

The \$3 trillion stimulus that House Democrats released this week includes several water provisions, but they focus on utilities and hygiene concerns (*E&E Daily*, May 13).

But with bipartisan talks on the next pandemic package still in their infancy and the water projects reauthorization deliberations underway, shipping interests and water utilities see now as the time to push (*E&E Daily*, March 27).

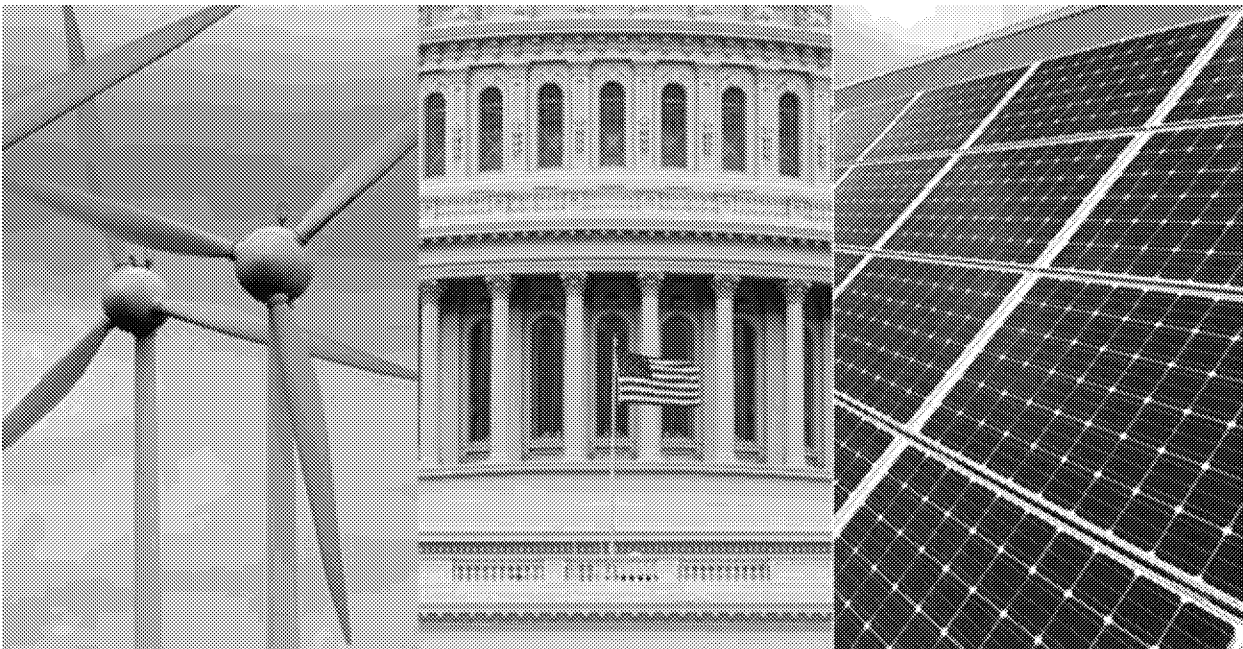
"Investment in the ports has to match investment that we're talking about being made in the energy industry so that we can move now and when the recovery" happens, Guenther said.

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'Devastating' clean energy jobs report sparks relief outcry

<https://www.eenews.net/eedaily/2020/05/14/stories/1063129959>

[Geof Koss](#), E&E News reporter Published: Thursday, May 14, 2020



A report on clean energy job losses is prompting advocates and many lawmakers to push for tax incentives and other aid. Pikrepo (wind and solar); Francis Chung/E&E News (dome)

Clean energy advocates are stepping up pressure for COVID-19 relief, citing dismal new unemployment numbers showing nearly 600,000 lost jobs within the sector since the start of the pandemic.

But a top House Republican signaled yesterday that the political headwinds remain strong against legislating on clean energy tax incentives.

The new analysis — released yesterday by Environmental Entrepreneurs, the American Council on Renewable Energy (ACORE), E4TheFuture and BW Research Partnership — said 594,347 clean energy workers, or nearly 18% of the industry's workforce, filed for unemployment benefits in March and April.

Of that number, 413,000 jobs were lost within the efficiency sector, with renewables coming in second at more than 95,000 jobs. More than 46,000 jobs were lost in the clean vehicles sector. Those numbers are likely to increase, the analysis states, citing ongoing stay-at-home orders and the closure of nonessential businesses due to the pandemic.

The Alliance to Save Energy, whose members saw major job losses as construction declined, called on Congress to act.

"These are devastating numbers, and we need to start focusing here in Washington on what to do about it," Ben Evans, the alliance's vice president of public affairs, said in a statement. "This is about blue-collar workers, most of them working for small businesses, who have suddenly lost their livelihood."

ACORE President and CEO Gregory Wetstone said the April losses were worse than had been feared, and called on Congress to make changes to existing tax breaks to make them more accessible in the stalled economy.

"The COVID-19 pandemic is delivering an unprecedented blow to renewable industry workers, whose job losses more than tripled over the past month," Wetstone said in a statement.

"Congress can help get these Americans back to work, and help get our economy back on track, with commonsense relief for time-sensitive tax credit deadlines and temporary refundability for renewable tax credits that are increasingly difficult to monetize."

Clean energy advocates have struggled to get their priorities into the four COVID-19 stimulus packages enacted so far, with a worsening public health and economic crisis consuming lawmakers' attention.

House Speaker Nancy Pelosi (D-Calif.) has called for a massive green-infrastructure package, but that push also keeps being relegated to the back burner (*E&E Daily*, May 13).

While the House is scheduled to vote tomorrow on a \$3 trillion stimulus package, it is viewed as a legislative marker for future talks and largely sidesteps energy and environmental policies sought by advocates (*see related story*).

Sen. Ed Markey (D-Mass.), the leading Senate advocate for the Green New Deal, took to Twitter yesterday insisting that the clean energy sector be covered in the next aid package.

"The next #COVID19 package needs to include support for the clean energy sector, which has been devastated by the pandemic. Our response can't just be a reaction, it has to be an investment in the technologies & workers who will power this country's future," he *tweeted*.

Sierra Club Legislative Director Melinda Pierce called for leadership in Congress to help clean sources and efficiency. She called the House package a start but said more needs to be done.

"The \$3T bill just released by the House contains many important priorities for the country, and though it includes a lengthy tax section, it unfortunately leaves out COVID-19 related assistance that could save clean energy jobs," she said in a statement. "We cannot afford to let the clean energy industry backslide."

Rep. Kevin Brady (R-Texas), the ranking member on the Ways and Means Committee, told reporters yesterday he would oppose extending tax breaks for wind and solar that are phasing out of the code under a 2015 tax deal he helped negotiate.

That deal, which also ended a decades-old ban on crude oil exports, created a "glide path" for those renewables, said Brady. Speaking before the new jobs analysis was released, he said he was unaware of the plight of clean energy sectors.

However, Brady did not call for additional stimulus for the oil and gas industry, either, saying only that energy companies should qualify for existing loan programs created in response to the pandemic.

"I think the key right now is lending to the energy companies to protect their workers," Brady said, dismissing calls from left-leaning Democrats and environmentalists to exclude fossil fuel interests from stimulus lending. "I think that's wrong."

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E.P.A. Opts Against Limits on Water Contaminant Tied to Fetal Damage

<https://www.nytimes.com/2020/05/14/climate/trump-drinking-water-perchlorate.html?referringSource=articleShare>

A new E.P.A. policy on perchlorate, which is used in rocket fuel, would revoke a 2011 finding that the chemical should be regulated.



Andrew Wheeler, administrator of the Environmental Protection Agency, on Capitol Hill in March. Credit...Drew Angerer/Getty Images



By Lisa Friedman

- May 14, 2020, 12:13 p.m. ET
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- WASHINGTON — The Trump administration will not impose any limits on perchlorate, a toxic chemical compound that contaminates water and has been linked to fetal and infant brain damage, according to two Environmental Protection Agency staff members familiar with the decision.
- The decision by Andrew Wheeler, the administrator of the E.P.A., appears to defy a court order that required the agency to establish a safe drinking-water standard for the chemical by the end of June. The policy, which acknowledges that exposure to high levels of perchlorate can cause I.Q. damage but opts nevertheless not to limit it, could also set a precedent for the regulation of other chemicals, people familiar with the matter said. The chemical — which is used in rocket fuel, among other applications — has been under study for more than a decade, but because contamination is widespread, regulations have been difficult.

In 2011, the Obama administration announced that it planned to regulate perchlorate for the first time, reversing a decision by the George W. Bush administration not to control it. But the Defense Department and military contractors such as Lockheed Martin and Northrop Grumman have waged aggressive efforts to block controls, and the fight has dragged on. According to the staff members, who asked not to be identified because they were not authorized to speak about agency decisions, the E.P.A. intends in the coming days to send a federal register notice to the White House for review that will declare it is “not in the public interest” to regulate the chemical.

Perchlorate can occur naturally, but high concentrations have been found in at least 26 states, often near military installations where it has been used as an additive in rocket fuel, making propellants more reliable. Research has shown that by interfering with the thyroid gland’s iodine uptake, perchlorate can stunt the production of hormones essential to the development of fetuses, infants and children.

The new policy will revoke the 2011 E.P.A. finding that perchlorate presents serious health risks to between 5 million and 16 million people and should be regulated. To justify doing so, the Trump administration will cite more recent analyses claiming concentrations of the chemical in water must be at higher levels than previously thought in order to be considered unsafe.

In addition, because states like California and Massachusetts regulated the chemical in the absence of federal action, the E.P.A. will say few public water systems now contain perchlorate at high levels, so the costs of nationwide monitoring would outweigh the benefits, the people who have viewed the rule said.

“The agency has determined that perchlorate does not occur with a frequency and at levels of public health concern, and that regulation of perchlorate does not present a meaningful opportunity for health risk reduction for persons served by public water systems,” the draft policy reads, according to the staff members.

In public comments, the Perchlorate Study Group, a coalition made up of aerospace contractors including Aerojet Rocketdyne, American Pacific Corporation, Lockheed Martin, and Northrop Grumman Innovation Systems, had strongly urged the E.P.A. to withdraw its 2011 determination because “perchlorate does not occur with a frequency and at levels of public health concern” in public water systems.

The decision is the latest in a string of Trump administration regulatory actions that weaken toxic chemical regulations, often against the advice of E.P.A.’s own experts, in ways favored by the chemical industry.



Volunteers distributed bottled water in Barstow, Calif., where perchlorate was found in the water supply in 2010. Credit: Gina Ferazzi/Los Angeles Times, via Getty Images

Last year the administration announced it would not ban chlorpyrifos, a widely used pesticide that its own experts linked to serious health problems in children. It also opted to restrict, rather than ban, asbestos, a known carcinogen, despite urging by E.P.A. scientists and lawyers to ban it outright like most other industrialized nations.

“This is all of a piece,” said Rena Steinzor, a law professor at the University of Maryland. “You can draw a line between denial of science on climate change, denial of science on coronavirus, and denial of science in the drinking water context. It’s all the same issue. They’re saying ‘We don’t care what the research says.’”

Andrea Woods, a spokeswoman for the E.P.A., said in a statement that the agency had not yet made a final decision on perchlorate. “Any information that is shared or reported now would be premature, inappropriate and would be prejudging the formal rulemaking process,” she said.

Ms. Woods said the final rule would be sent to the Office of Management and Budget for interagency review, adding “the agency expects to complete this step shortly.” She did not answer questions about the court order. The regulation of perchlorate has been a political football since the 1990s when testing found the presence of the chemical in hundreds of wells. In 2008, the Bush administration said it would not set limits on the chemical. One year later, the Obama administration moved to reverse course. It issued a recommendation to states that 15 micrograms per liter is the highest concentration of perchlorate in water that the most sensitive populations, like pregnant women, should ingest.

In 2011, the Obama administration issued an official finding that worrisome levels of perchlorate had been detected in enough public water systems to warrant regulation, and the E.P.A. announced the agency’s intention to set limits. The Obama administration dragged its feet, though, and the Natural Resources Defense Council, an environmental group, sued. Moving ahead with regulation ultimately fell to the Trump administration and, in 2018, the E.P.A. agreed to a court settlement requiring a final standard on perchlorate. The court granted the administration extensions, and a final standard must be issued by June.

Last year the E.P.A. did propose federal regulation of perchlorate but it suggested a limit of 56 micrograms per liter, more than three times higher than what the E.P.A. had previously determined to be safe. It also asked for comments from the public on an even higher threshold of 90 micrograms per liter, as well as whether to abandon plans for regulations altogether. The final rule described by the staff members shows that the administration chose the most extreme option.

In doing so, the policy notes that the idea of setting a limit for 56 micrograms per liter was based on studies showing that it could avoid an average I.Q. loss of two points among babies of iodine-deficient pregnant women.

Even an exposure of 18 micrograms per liter, slightly above the current federal recommendation, would amount to an average I.Q. loss of one point. Critics of the policy said the E.P.A. was implicitly accepting that those health outcomes are not considered adverse health effects, and that the decision could affect the future regulation of other chemicals.

“Not only is E.P.A. acting in defiance of a court order and the law, it’s setting a terrible precedent by ignoring much of the science and allowing such a high level of perchlorate in tap water that it acknowledges is associated with an average 2-point I.Q. loss in exposed kids,” said Erik Olson, senior strategic director of health and food at the Natural Resources Defense Council. Ms. Woods, the E.P.A. spokeswoman, declined to respond to a question about I.Q. damage from perchlorate.

Chemical industry representatives did not respond immediately to a request to discuss the E.P.A. policy. But in public comments to the agency, they, along with some state water districts and military contractors, urged the E.P.A. to not regulate perchlorate.

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Critics blast EPA rule to seize control of state permits

<https://www.eenews.net/greenwire/2020/05/13/stories/1063126715>

Hannah Northey and Kelsey Brugger, E&E News reporters Published: Wednesday, May 13, 2020



EPA headquarters. Francis Chung/E&E News

EPA is planning to roll out a final rule as early as tomorrow that would allow the agency to issue Clean Water Act permits over state objections about an energy project's impact on climate change or air quality, according to one source familiar with the matter.

The exact timing of the release, the source said, hinges on the Office of Management and Budget approving a number of other regulatory matters.

The upcoming rule already has critics decrying the limits the regulation would place on state authority in energy project decisionmaking.

EPA in August released a proposed version of the rule, formally known as "Updating Regulations on Water Quality Certification," which would prevent states from considering issues other than water quality in their certifications (*[Greenwire](#)*, Aug. 9, 2019).

The EPA rule would ban states from considering issues other than water quality when issuing permits for pipelines or coal terminals. Specifically, it would limit the scope of the permits. And it would mandate the state to approve or disapprove the permits within a year.

The rulemaking is contentious, especially in states like New York and Washington that have used the state certification process to raise questions about climate change or other issues. Critics say some blue states have intentionally dragged out decisions on permits.

While the rule is seen as a boon for the oil and gas sector, it would also boost the hydropower sector, which has said that state reviews cause some of the biggest delays in the relicensing and permitting process for both preexisting and new facilities.

The rule stems from an April 2019 executive order President Trump signed that directed EPA to finalize the rule within 13 months. According to the Trump regulatory plan, the rule should be released this month.

After the regulation is finalized, other agencies such as the Federal Energy Regulatory Commission and the Army Corp of Engineers have three months to finalize similar guidance.

Reaction

While proponents of the rule hope it will clarify and streamline the permitting process, critics are concerned states won't have enough time to work through detail-heavy filings or raise objections outside the scope of water, including climate change and air pollution.

The National Hydropower Association in a release said that through Section 401 of the Clean Water Act, states and other certifying authorities play an important role in ensuring that discharges from federally licensed and permitted activities, including hydropower projects, comply with water quality requirements.

"Over the many years since EPA adopted its section 401 rules, however, the issues that states have sought to address in their certification decisions have expanded far beyond the water quality concerns reflected in section 401," the association wrote. "This expanded scope is not only inconsistent with section 401, it is also a substantial intrusion on the exclusive licensing authority that Congress has assigned."

LeRoy Coleman, a spokesman for the association, added in an email that the group believes the statutory time period provided under the CWA gives states enough time to make certification decisions. He noted the federal hydropower licensing process — which involves states and resource agencies — begins years before a certificate is issued.

But Betsy Southerland, a former career official in EPA's Office of Water, said the rule represents a "big constraint" for states because often the first draft applications lack the details needed for them to thoroughly evaluate impacts.

States wanted the clock to start only after they deemed the application complete, not from the moment the first draft of the application was sent to them, she said. The proposed rule also would limit the issues that states could use to ask for rejection or modification of the federal permit, she added.

Under Section 401 of the Clean Water Act, states are allowed to certify whether a federally licensed project will violate their water quality standards including consideration of climate change impacts, which the proposed rule wants to disallow, she said.

"Once again EPA reveals that the agency is a champion of state rights only when states lack the resources or political will to protect public health and the environment," Southerland said. "This new guidance severely limits states' ability to set conditions on interstate construction projects such as pipelines in order to protect their drinking water, fisheries and flood controls. Once again EPA protects the oil and gas industry instead of the American public."

Industry representatives, however, charged that some states have weaponized the permit process for political gain.

In a comment on the proposal, several oil and gas trade groups wrote last year that some states are "improperly using Section 401 to inappropriately delay or halt altogether the permitting process for pipelines that transport natural gas in interstate commerce." They also characterized state actions as a "disservice to cooperative federalism."

"In the case of interstate natural gas pipelines, the improper implementation of Section 401 by certain states has undermined the Federal Energy Regulatory Commission's exclusive authority to approve interstate natural gas infrastructure and denied other states the opportunity to benefit from said infrastructure," wrote American Gas Association President Karen Harbert.

Other groups, including the American Petroleum Institute, Interstate Natural Gas Association of America and Independent Petroleum Association of America, also signed on.

Other industry sources stressed that EPA's existing rule surrounding the certification process has not been updated in several decades.

It remains to be seen how much the new regulation will help industry. EPA singled out four case studies — the Constitution, Valley Lateral and Northern Access pipelines and the Millennium Bulk Terminals — in its report accompanying the proposal, but the agency acknowledged that those examples didn't offer a perfect illustration of the process (*Greenwire*, Aug. 20, 2019).

The National Mining Association, which had a teleconference with White House regulatory staff on May 6, said in an email that at the meeting it urged administration officials to finalize the rule as proposed.

The EPA rule is one of several energy and environmental regulations the administration is expected to finalize in the coming days, former White House official and GOP lobbyist Mike McKenna said in an interview.

He said administration officials are operating under the notion of a mid-May deadline to prevent a potential future Democratic overturn under the Congressional Review Act. Should Democrats take control of the Senate and the White House in November, they could reverse the Trump administration's rules that were completed within 60 legislative days of the new term.

The actual Congressional Review Act cutoff date, though, is unknown as the legislative calendar is uncertain amid the COVID-19 pandemic.

An EPA spokesperson responded in an email today that its timing for finalizing rules "had been outlined for many months, and sometimes even more than a year ago, as reported in our [fall 2019] regulatory agenda."

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EPA won't regulate rocket fuel chemical tied to developmental damage: NYT

BY [REBECCA BEITSCH](#) - 05/14/20 01:15 PM EDT

<https://thehill.com/policy/energy-environment/497794-epa-wont-regulate-rocket-fuel-chemical-tied-to-developmental-damage>

The Environmental Protection Agency (EPA) will not set a limit on a chemical used in rocket fuel that has been linked with brain damage, The New York Times reported Thursday, though the agency said it has not yet made a decision on the rule.

The EPA in May 2019 proposed limits for perchlorate in drinking water that critics said were 10 to 50 times higher than what experts recommend.

A court order required EPA to set a new perchlorate standard by June, but according to the Times, the agency plans to send a rule to the Office of Management and Budget arguing any regulation of the substance is unnecessary.

“The agency has determined that perchlorate does not occur with a frequency and at levels of public health concern, and that regulation of perchlorate does not present a meaningful opportunity for health risk reduction for persons served by public water systems,” the draft policy reads, according to the outlet.

An earlier proposal from the agency suggested placing the maximum contaminant level at 56 parts per billion (ppb), up from the 15 ppb proposed under the Obama administration.

Some states have their own regulations on perchlorate that fall as low as 2 ppb. The substance is naturally occurring but has also leached into water through military use. It’s commonly found in solid rocket propellants, fireworks, matches and signal flares.

“The science on perchlorate is very clear: It harms infants and the developing fetus,” Olga Naidenko, senior science adviser for children’s environmental health at the Environmental Working Group, said when EPA unveiled its proposal last May.

Perchlorate can cause irreparable damage to both cognitive and physical development. Instead of taking action to lower the levels of this rocket fuel chemical in drinking water, the administration’s plan will endanger the health of future generations of kids.”

EPA said it has not yet decided how to proceed with regulating perchlorate.

“The agency has not yet made a final decision and any information that is shared or reported now would be premature, inappropriate and would be prejudging the formal rulemaking process. The next step in the process is to send the final rule to the Office of Management and Budget for interagency review. The agency expects to complete this step shortly,” the agency told The Hill by email.

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Court Blocks Feds’ Bay-Delta ESA BiOp, Forcing Curbs On Water Releases

<https://insideepa.com/daily-news/court-blocks-feds%E2%80%99-bay-delta-esa-biop-forcing-curbs-water-releases>

May 14, 2020

A federal court has approved requests from California and environmentalists to block initial implementation of the Trump administration's Endangered Species Act (ESA) biological opinion (BiOp) that will control water releases from two large supply facilities into the state's sprawling Bay-Delta watershed.

The May 11 ruling "will require reduced pumping by the [Central Valley Project (CVP)] in the remainder of May," Doug Obegi, director of California River Restoration for the Natural Resources Defense Council (NRDC), said in a May 12 blog, because it will require the Bureau of Reclamation to comply with limits in a 2009 BiOp.

He notes that the limits on water supply in the 2009 BiOp mirror those set by the State Water Project (SWP) under its incidental take permit. California Attorney General Xavier Becerra (D) also welcomed the ruling, though he cautioned that the plaintiffs will still have to prevail on the merits. "The fight is not over. We have the facts, science, and the law behind us, and we look forward to making our case in court."

Becerra, who is representing the California Natural Resources Agency, CalEPA and the people of the state of California as plaintiffs in the consolidated case *The California Natural Resources Agency, et al., v. Wilbur Ross, et al.*, filed the motion for preliminary injunction last month. Judge Dale Drozd of the U.S. District Court for the Eastern District of California granted the injunction, finding in part that the state and co-plaintiffs fishing and environmental groups are likely to prevail on one of their claims that several federal agencies violated the ESA and Administrative Procedure Act (APA) in approving the new BiOp in late 2019.

As a result, Drozd is blocking federal agencies from releasing any water based on the new BiOp for the South Delta through May 31, "on the specific ground that operations carried out pursuant to the Proposed Action will irreparably harm threatened" California Central Valley (CCV) steelhead fish. The order also holds other aspects of a motion by co-plaintiff Pacific Coast Federation of Fishermen's Associations (PCFFA) "in abeyance with the understanding that the court intends to issue a separate order addressing those remaining requests for injunctive relief in the near future."

PCFFA and several other environmental and fishing groups first sued federal resource agencies over the BiOps in December. They contend that the federal agencies' plans will distribute too much water from the large water projects to San Joaquin Valley farmers and water districts in southern California, imperiling fish and the environment in the delta watershed.

California filed a very similar lawsuit in February. The challenges were then consolidated.

The lawsuit's targeted federal agency defendants include the National Oceanic & Atmospheric Administration, National Marine Fisheries Service (NMFS) and Fish & Wildlife Service (FWS). At issue is FWS' "Biological Opinion For the Reinitiation of Consultation on the Coordinated Operations of the CVP and SWP." The Oct. 21 opinion is the product of a joint request by the reclamation bureau, the lead federal agency, and the California Department of Water Resources, the applicant, for the ESA consultation, according to FWS' website. Spokeswomen for defendant federal agencies did not respond to requests for comment by press time.

Species Impacts

Under the ESA, federal agencies consult with FWS if a project may adversely affect a listed species. FWS then issues a BiOp on whether a project is likely to jeopardize a listed species or destroy or adversely modify its critical habitat. California and the environmental and fishing groups allege that the agencies' BiOp is arbitrary and capricious and violates the APA and ESA.

The CVP and SWP, which are jointly operated by the Bureau and California's Department of Water Resources, are two of the largest water projects in the country that operate a "vast system of dams, reservoirs, canals, and pumping facilities to divert massive amounts of water from the Sacramento and San Joaquin River systems and the fragile San Francisco Bay/Sacramento-San Joaquin River Delta . . . primarily for agricultural and municipal uses in California's Central Valley and southern California," the original lawsuit explains.

But the plaintiffs charged that the Oct. 21 BiOp essentially reversed a July 1, 2019, opinion issued by the Fisheries Service “that concluded that Reclamation’s proposed plan was likely to jeopardize listed salmon and steelhead, as well as Southern Resident killer whales, and was likely to destroy or adversely modify critical habitat, in violation of the Endangered Species Act.” Judge Drozd agreed, finding in part that the new BiOp reflects a drastic change in course from the 2019 opinion.

“The court still believes that the record before it supports, at least preliminarily, a finding that NMFS’s decision to not impose [a water export ratio] going forward amounts to a change of position that triggers certain obligations under the APA,” the order states. “Here . . . the court again concludes plaintiffs have raised serious questions about whether NMFS has articulated a satisfactory explanation for its dramatically changed approach.” In addition, Drozd concluded that the plaintiffs have shown that the federal agencies likely violated the ESA.

“At a bare minimum, plaintiffs have raised at least the following serious question: Even after Reclamation incorporated the new performance measures/loss limits into its Proposed Action, NMFS was only able to conclude that harms would be ‘similar’ to those experienced in the past,” the order says. “Given that it appears to be undisputed that CCV steelhead are declining, the court has serious concerns as to whether this reasoning satisfies NMFS’s obligations under the ESA to evaluate whether the Proposed Action would jeopardize the species or destroy or adversely modify critical habitat.”

Further, the plaintiffs show that ESA claims also likely extend to the Bureau, according to the order. The court “finds that the serious questions plaintiffs have raised with respect to NMFS’s liability under Section 7 extend to their claims challenging Reclamation’s acceptance of the 2019 NMFS BiOp and therefore raise serious questions as to Reclamation’s liability as well,” Drozd adds.

The dispute over the Trump administration’s BiOp and a recent state “incidental take permit” to protect fish species have split top California Democrats both in Congress and at the state level, with representatives of districts in the Golden State’s Central Valley with a heavy agriculture presence potentially supporting the Trump administration’s general position. -- *Curt Barry* (cbarry@iwpnews.com)

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EPA Says Perchlorate Largely Below Safe Levels in Tap Water

https://news.bloomberglaw.com/environment-and-energy/epa-says-perchlorate-largely-below-safe-levels-in-tap-water?usertype=External&bwid=00000172-1448-dd2f-af76-dc6cfe480001&qid=6906714&cti=FGOV&uc=1320000080&et=CURATED_HIGHLIGHTS&emc=neve_hlt%3A2&context=email&email=00000172-1464-d0b2-ad77-346c09f20000&access-ticket=eyJjdHh0IjoiTkVWRSIsImklIjoiMDAwMDAxNzltMTQ0OC1kZDZmLWFmNzYtZGM2Y2ZlNDgwMDAxliwic2lnIjoiR3Nlc05YVjRlTEhqbmlFhQnlGd2FRa3RKSjJNPSIsInRpbWUiOiIxNTg5NDg2NzE5liwidXVpZCI6InBqbTBpQ2k0NnY1bm5VcmppmQmtBbWc9PWpSV0MlK2praWxmVWRJU2dFVDVTSnc9PSIsInYiOiIxIn0%3D

May 14, 2020, 3:59 PM

- EPA analysis shows a drop in perchlorate levels in drinking water
 - Environmental groups say EPA is laying the groundwork to set looser standards
- Stringent state standards coupled with cleanup of Superfund sites are responsible for a drop in perchlorate levels observed in drinking water, according to the EPA’s latest analysis of monitoring data.

Based on that finding, the Environmental Protection Agency announced Thursday it has concluded that “there is infrequent occurrence of perchlorate at the levels of public health concern.”

The EPA stopped short of saying whether it plans to set drinking water standards for perchlorate, a chemical used in rocket fuel. The agency is working on that decision and said a final action would be issued in June.

To contact the reporter on this story: Amena H. Saiyid in Washington at asaiyid@bloombergenvironment.com

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EPA to Begin First-Ever ‘Unilateral’ New Chemical Restriction

<https://news.bloomberglaw.com/environment-and-energy/epa-to-begin-first-ever-unilateral-new-chemical-restriction>

May 13, 2020, 2:47 PM

- Restriction would result from no company input
- Action expected over next month or so

The EPA is preparing to issue a “unilateral” restriction on new chemicals, an option it’s never used before, a top agency official said Wednesday.

“We’re moving to issue the first series of unilateral [orders] over the next month or so,” said Lynn Dekleva, associate deputy assistant administrator for new chemicals at the Environmental Protection Agency.

Such orders would in some way restrict a new chemical, one that’s never been made in or imported into the U.S.

But what’s unusual is the agency would do so without any input from the company wanting to make or import the new chemical.

Allow ‘Commercialization’

The agency commonly issues orders limiting, for example, how much of a new chemical can be released into water. But historically, such orders have been negotiated with the company seeking to make or import the new chemical.

The EPA will be cautious in using this new type of order, Dekleva said, speaking at a webinar hosted by the American Chemistry Council.

The agency will impose unilateral restrictions only when a new chemical may injure people or the environment and when—despite multiple efforts to contact it—the would-be manufacturer has been unresponsive, she said.

“The agency’s goal is to allow the commercialization of products,” Dekleva said.

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bloombergenvironment.com

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Judge Hands Down Mixed Evidentiary Rulings Ahead Of Novel TSCA Trial

<https://insideepa.com/daily-news/judge-hands-down-mixed-evidentiary-rulings-ahead-novel-tsca-trial>

May 13, 2020

A federal judge says he is “inclined” to bar witnesses from describing fluoridation’s health benefits in a landmark trial on whether EPA must regulate drinking water fluoridation under the Toxic Substances Control Act (TSCA), saying they are irrelevant to risk evaluation under the law, the latest pre-trial loss for the agency ahead of the June 8 arguments.

During a May 8 hearing in *Food & Water Watch, Inc. et al v. EPA*, Judge Edward Chen of the U.S. District Court for the Northern District of California signaled he would accept a pre-trial motion in limine the plaintiffs filed last December, seeking to bar testimony on fluoridation’s benefits from the trial.

Chen agreed with the plaintiffs that the revised law does not allow consideration of benefits when determining whether a substance poses an “unreasonable risk,” the threshold for EPA regulation under the law, while the provisions governing risk management actions allow such considerations.

While not definitive, the ruling could help bolster the plaintiffs’ efforts to have Chen find that fluoride poses an unreasonable risk when the case goes to trial. It could also limit EPA efforts to consider benefits when making its risk determinations.

However, Chen also appeared to agree with EPA on plaintiffs’ separate effort to bar testimony on whether the agency’s current activities would allow it to defer rulemaking on fluoridation if the judge were to rule that the substance must be regulated. As a result, Chen has indicated he will adopt a bifurcated trial structure to consider separate questions on whether fluoride poses an unreasonable risk that must be addressed and when the agency must regulate it. The judge’s decisions mark the latest as the court prepares to consider environmentalists’ long-running effort to get EPA to use TSCA authority to ban drinking water fluoridation.

The plaintiffs believe the common practice in American water systems causes neurological and other harms outweighing the dental health benefits for which it was originally encouraged by the U.S. Public Health Service in the 1940s. Plaintiffs originally petitioned EPA under TSCA section 21 to ban fluoridation. EPA denied the petition, and the groups challenged the denial in federal district court. Such cases were once rare, as groups rarely undertook the laborious process of gathering information to present in such a petition, let alone pursuing a court challenge.

Moreover, Chen’s early rulings allowing the case to continue to de novo trial represented a series of early losses for EPA in the case, which was previously delayed by the 2018 government shutdown, before the coronavirus pandemic led Chen to determine the trial will be held virtually next month. But at the last court hearing in January over EPA’s standing challenge, Chen again allowed the case to continue, while expressing skepticism on key issues plaintiffs will need to address.

Pre-Trial Motions

The May 8 conference focused on a series of pre-trial motions, some of which could have important implications when the parties start their arguments next month. In one motion, filed last December, the plaintiffs sought to bar testimony on the benefits of fluoridation. EPA opposed the motion, arguing that evidence of fluoridation’s health benefits is “critical” to the ultimate question the judge will rule on in the trial in June, “whether community water fluoridation poses an unreasonable risk of injury to health under” TSCA.

The written debate prompted Chen to ask the parties to discuss in more detail “whether the term ‘unreasonable risk’ as it is used in common law or similar statutes includes assessment of benefits.” John Do, a Justice

Department attorney representing EPA, told Chen that of the existing chemicals EPA is evaluating as Congress directed in its 2016 reform of TSCA, it is “very common thus far [among the chemicals] EPA’s considered [they] don’t have a health benefit, they have an industrial or commercial benefit.”

In the reformed version of TSCA, Do notes, “Congress is intentionally carving out” in its discussion of how EPA should perform risk evaluations to determine whether a chemical’s use poses unreasonable risk that “EPA should not consider cost or industrial benefits.” TSCA section 6(b)(4)(A) directs EPA to conduct risk evaluations of existing chemicals “to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs of other nonrisk factors. . . .” The section makes no mention of a chemical’s beneficial properties.

By contrast, when describing how EPA shall promulgate a risk management rule after determining that a chemical’s use poses unreasonable risk, reformed TSCA section 6(c)(2)(A) directs EPA to “consider” among other elements “the benefits of the chemical substance or mixture for various uses.” Do went on to cite Senate report language from the legislative record to argue that Congress is “expressly discussing how it didn’t want EPA to consider economic considerations, leaving of course, consideration of health benefits. Less fluoride means an increase in the hazard of dental decay,” he said.

Michael Connett, an attorney with the firm Waters Kraus & Paul for the plaintiffs agreed with Do that other common law uses of the term unreasonable risk have a balancing test where benefits can be considered. But he argued that “TSCA is unique and the amendments in 2016 are very clear and no distinction is drawn as to get rid of balancing for economic tests but kept for the health benefits.” Connett pointed to language in the Senate report that in his view “says the act clearly rejects . . . the balancing test . . . there is no distinction you can do a balancing test for some types of [considerations] but not others.” Connett also pointed to a page on EPA’s website describing the agency evaluates chemical safety using its TSCA authority. Connett pointed to a line on the site stating, “TSCA prohibits EPA from considering non-risk factors (eg costs/benefits.)”

“The legislative history is clear and EPA has recognized in its own public documents,” Connett said. Do tried to rebut Connett’s points by arguing, “Many of these documents are written in that context that EPA has not had an opportunity to address a chemical that does have a health benefit. This is all about wording and semantics.” He suggested that considering health benefits “is essentially a risk consideration. Fluoride provides a reduction of hazard to tooth decay, that’s why it’s a non-risk consideration.”

Chen, however, appeared unconvinced. “The problem I have with the government’s position, is there is nothing in the language in the statute, other than the term ‘unreasonable risk,’ then amended [to say you shall] not considering non-risk factors,” he said. “To assume a risk [from] non-availability of fluoride is not a fair assumption, there’s the whole rulemaking process,” which, he noted, could have conclusions other than a ban, such as dropping the fluoridation level or providing geographic-specific advice.

“I’m still inclined to accept [plaintiffs’] motion. Let’s move on,” Chen said.

Defer Rulemaking

But Chen appeared to agree with EPA’s argument against plaintiffs’ motion to exclude testimony regarding whether EPA’s present TSCA activities meet the two requirements under section 21(b)(4)(B)(ii) that would allow the agency to defer rulemaking on fluoridation if Chen were to rule that the practice poses unreasonable risk. Plaintiffs sought to exclude such testimony from the trial, arguing that EPA has no basis for its argument and the testimony would only waste limited trial time.

In response, EPA argued that “whether rulemaking should be deferred is not ripe for inquiry until the Court determines the extent of risk, if any, posed by adding fluoridation chemicals to drinking water to reach a recommended optimal concentration for reducing tooth decay of 0.7 milligrams per liter (mg/L).” The relevant statutory language allows a judge presiding over a TSCA petition challenge to allow EPA to defer rulemaking

even if the court finds unreasonable risk “[i]f the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this chapter and there are insufficient resources available to the Administrator to take the action requested by the petitioner . . . until such time as the court prescribes.”

The clerk’s notes from the hearing state that Chen “has adopted a bifurcated [trial] structure; should the Court determine that an unreasonable risk exists, it will hold a second proceeding to determine whether EPA may defer the rulemaking process pursuant to 15 U.S.C. § 2620.”

Chen said that “it makes sense to defer [such testimony until] if there is a finding of unreasonable risk. As much as I don’t like to bifurcate [a trial] because of inefficiency, it makes sense not to mix apples and oranges.” - *Maria Hegstad* (mhegstad@iwpnews.com)

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Groups Fault EPA Move to Ease Air Permit Terms Without New Rule

<https://news.bloomberglaw.com/environment-and-energy/groups-fault-epa-move-to-ease-air-permit-terms-without-new-rule>

May 14, 2020, 12:23 PM

- Companies can grade, clear sites before seeking air permits
- State officials warn such a change will invite litigation

The EPA’s attempt to make a “wholesale change” to its Clean Air Act permitting program through guidance will confuse people and invite litigation, a group of state and local air officials warned the agency.

The National Association of Clean Air Agencies, as well as environmental groups, are concerned the Environmental Protection Agency is making a change to Clean Air Act rules for the New Source Review permit program without going through the rulemaking process.

Right now, companies need a permit before beginning “actual construction” of a unit that will significantly increase air pollution. But industry groups say the term has led to confusion on when permits are needed.

The EPA, in draft guidance released in late March, said companies can grade and clear land to prepare for construction or expansion of an emitting unit without triggering the need for a permit. The move is part of the agency’s broader push to allow industries like chemical manufacturers, refiners, and paper mills operators to make upgrades to their facilities without needing New Source Review permits.

‘Sow Confusion’

The EPA’s new interpretation is bound to “sow confusion among regulators, the regulated community and the public, and will likely be subject to legal challenge,” the association wrote in May 11 comments. The group represents 41 state air pollution control agencies, various local agencies, the District of Columbia, and four territories.

It asked the EPA to change terms through new rules that allow for public comments, not through guidance—a complaint echoed by environmental groups.

The agency released the draft guidance in response to President Donald Trump's 2017 order to streamline permitting. It accepted comments through an online portal until May 11.

Under New Source Review, companies must install the best available pollution controls to offset increases in key pollutants like nitrogen oxides and sulfur dioxides caused by expanding or upgrading individual units.

'Major Departure'

Environmental groups also criticized the EPA's recent interpretation, saying it was "a major departure" from the plain meaning of the regulatory language.

Under current air regulations, to "begin construction" is defined to mean "in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature."

In its draft guidance, the EPA says this definition shouldn't be applied to any construction or preparation activities that aren't on an emissions unit.

But Earthjustice, the Sierra Club, and Natural Resources Defense Council say the EPA is completely ignoring the definition's "in general" phrase, excluding any emissions released while a site is getting prepared for construction or expansion.

"That introductory term connotes that what follows is meant to be an illustrative or imprecise description of the matter at issue," the groups wrote.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Law is operated by entities controlled by Michael Bloomberg.

Trade Groups Blame Uncertainty

In contrast, the changes were backed by industry trade groups, including the Portland Cement Association, the American Petroleum Institute, the American Chemistry Council, the American Forest & Paper Association, and the Air Permitting Forum.

In joint comments, they wrote that the EPA's interpretation of what is deemed the start of construction has morphed and strayed from the regulatory definition, causing confusion for permitting authorities and regulated entities.

"That inconsistency has, in turn, led to needless delays in preparations for projects that would otherwise be consistent with and permissible under the regulations," the groups wrote.

Tony Sullivan, a Clean Air Act attorney with Barnes & Thornburg LLP, said over the years, "there have been quite a few requests for determination regarding the scope and breadth of the term 'actual construction' and what activities are covered or not."

He said he expects the agency's draft guidance to be challenged in court once it's final.

"Based on our review of the draft guidance and comments, it seems likely to us that some group or another will challenge this draft guidance, and also likely that one of the arguments pursued will be that notice and comment rulemaking is required," Sullivan said in an email on Wednesday.

"Of course, whether that argument has merit will be up to the courts to decide," he said.

To contact the reporter on this story: Amina H. Saiyid in Washington at asaiyid@bloombergenvironment.com

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California Budget Plan Cuts \$19 Billion, Kills Climate Fund

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May 14, 2020, 3:58 PM

- Revised budget cuts nearly \$19 billion in spending
- The state has project a \$54 billion deficit through 2021

California Gov. Gavin Newsom presented a revised budget Thursday that cuts nearly \$19 billion in spending, including a \$250 million Climate Catalyst Fund, to reflect the state's hefty coronavirus-linked deficit.

"Our budget today reflects that emergency," Newsom said, speaking of the coronavirus pandemic, which has sapped the state's finances with stay-at-home orders and dwindling tax revenue.

"We are proposing a budget to fund our most essential priorities — public health, public safety and public education—and to support workers and small businesses as we restart our economy," he said. But difficult decisions lie ahead."

Newsom's new budget, which estimated a \$54 billion deficit through 2021, maintained funding for its Environmental Protection and Natural Resources agencies, as well as cap-and-trade spending of \$965 million focused on air and water projects.

The Climate Catalyst fund, which was supposed to offer \$1 billion over four years, would have offered low-interest loans for projects that reduce transportation emissions, support recycling, and promote clean agriculture programs but don't have access to traditional sources of funding.

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Feuds Among EPA, Companies Delay Cleanup of Contaminated Harbor

https://news.bloomberglaw.com/environment-and-energy/feuds-among-epa-companies-delay-cleanup-of-contaminated-harbor?usertype=External&bwid=00000171-c61f-d2d3-ad7f-d69f5cd60002&qid=6906714&cti=FGOV&uc=1320000080&et=CURATED_HIGHLIGHTS&emc=neve_hlt%3A3&context=email&email=00000172-1464-d0b2-ad77-346c09f20000&access-ticket=eyJjdHh0IjoiTkVWRSIsImklIjoiMDAwMDAxNzEtYzYxZi1kMmQzLWFKN2YtZDY5ZjVjZDYwMDAyIiwic2lnIjoib0dyRkMgeranlUbWJLRVpvaTNYa0pHeUdCMjRFPSIsInRpbWUiOiIxNTg5NDg2NzE5IiwidXVpZCI6InBqbTBpQ2k0NnY1bm5VcmppmQmtBbWc9PWpSV0MlK2praWxmVWRJU2dFVDVTSc9PSIsInYiOiIxIn0%3D

May 14, 2020, 6:01 AM

Listen

- EPA denied request for changes to remedy
 - Harbor on Wheeler's priority list
- A tug of war over one of the country's most toxic sites is pitting the EPA against a handful of companies paying for cleanup.

The companies have sought to reduce the scale and cost of the cleanup at Portland Harbor, a key international shipping port in Oregon, claiming hardship due to the coronavirus pandemic. But the Environmental Protection Agency earlier this month denied their request.

Both sides claim the other is unnecessarily slowing the cleanup process at the harbor. It has been a Superfund site for two decades, and has spent about three years on EPA Administrator Andrew Wheeler's priority list. But cleanup has yet to begin.

About 100 companies are potentially liable for remediation at the site. Some, including General Electric Co., Shell Oil Co., Arkema Inc., and Bayer Crop Science Inc., signed agreements with the EPA in March to start designing restoration of sections of the harbor.

But the lengthy negotiation period for a handful of other companies means some contamination has yet to be addressed.

Members of Oregon's congressional delegation have long been itching for the work to start.

"Every year the Portland Harbor goes without cleanup action, our region loses opportunities in the form of tax revenue, jobs, and property value, impeding economic opportunities for this important 11-mile stretch of industrial waterfront land within the City of Portland," the seven lawmakers said in an October 2017 letter to the EPA.

Future Indicator?

Complications in Portland Harbor's cleanup could be an indicator of the future of the 40-year-old Superfund program, said Carolyn McIntosh, partner at Squire Patton Boggs LLP in Denver, Colo.

"The larger, more complex sites now tend to be the ones that still remain within the program," she said. "These issues are not going to get easier as EPA moves forward, trying to remediate them."

One complication is local involvement.

As the current administration pushes for faster cleanup, tribal and local government representatives have been cut out of the conversation with EPA and the potentially responsible parties, said Laura Shira, environmental engineer at Yakama Nation Fisheries, a program of the Confederated Tribes and Bands of the Yakama Nation.

"We were a member at the table," she said. "That's all—or for the most part—been cut out."

They're On the List

The EPA's National Priorities List includes Portland Harbor and other sites, such as the Gowanus Canal in New York and San Jacinto River Waste Pits in Houston, that are the most contaminated in the country. The EPA oversees the cleanup process, including investigating the contamination, choosing a remedy, and ensuring that remedy protects human health and the environment.

The agency is "encouraged by the progress made so far" with Portland Harbor's cleanup, an agency spokesperson said May 11.

But a handful of companies working on the site have been "banging the drum" to scale back the EPA's cleanup plan for some time, said Channing Martin, chair of the environment and natural resources group at Williams Mullen in Richmond, Va.

Portland Harbor has been on the administrator's priority list for about three years, since Scott Pruitt headed the agency. Wheeler's goal for the site—which doesn't have a deadline or time frame—is to move quickly toward a settlement and get started on cleanup.

Coronavirus Blamed

Schnitzer Steel Industries Inc. and Evraz Inc., two companies working on cleanup at the harbor, said that because of the coronavirus pandemic, they would need more time to sign off on a remediation design agreement with the EPA. Both companies also petitioned the agency for changes to the site remediation plan, which would reduce the cost and time needed for cleanup.

The EPA in a March 26 enforcement order denied the extension, and on May 4, also denied the companies' request for changes.

The companies didn't show they need to significantly alter the site's cleanup plan, wrote Chris Hladick, EPA's Region 10 administrator, who oversees the Pacific Northwest. Wheeler asked Hladick to respond on his behalf, according to the letter.

Schnitzer Steel "will continue to seek ways to positively impact the Portland Harbor site-wide cleanup and reduce the remedy's cost burden on Oregon's economy and its severe, detrimental impacts to the river that will be caused by dredging," a spokeswoman said in a statement. Evraz declined to comment.

Gunderson LLC and Vigor Industrial LLC were also part of the petition, sent to Wheeler in March, to change the cleanup plan at Portland Harbor. Neither responded to requests for comment.

A Century of Shipping

Portland's century-long history of shipping and industrial and commercial activity left a toxic soup behind, contaminating the Willamette River's water and sediment with pesticides, petroleum, and other chemicals. The EPA designated a 10-mile stretch of the Willamette River the Portland Harbor Superfund site in 2000.

Cleanup costs could be up to \$3 billion, Schnitzer Steel and others claim, while the EPA's estimate is about \$1 billion.

The latest scuffle is part of several years of disagreements among the EPA and some of the companies, including over how much the site has already improved. The companies also want to dredge less contaminated sediment from the Willamette River.

Shira, from the Yakama Nation Fisheries, said she is relieved the EPA opted for enforcement orders. But she has "serious concerns" about how the cleanup has progressed since 2017.

The Yakama Nation has pushed for the harbor's cleanup since at least 1998, when it lobbied for the site to receive Superfund status.

Possible Judicial Review

The administrator's priority list was created as part of larger Superfund reform efforts, which Pruitt started in 2017 and Wheeler has continued. About 20 sites out of more than 1,300 around the country are part of the priority list, though the number has fluctuated.

The companies that signed the petition at Portland Harbor argued the chosen remedy for the site was "arbitrary and capricious." That wording presents a specific standard for a court to determine whether an agency's decision is valid.

If a court agrees the EPA's chosen remedy is "arbitrary and capricious," that remedy could be reversed, said Michael Blumenthal, attorney at McGlinchey Stafford PLLC in Cleveland.

But, "winning an arbitrary and capricious standard argument against EPA is extremely difficult," McIntosh, from Squire Patton Boggs, said.

The administrator's focus on the site and push for progress makes it even harder, Williams Mullen's Martin said.

"That is a tough thing to do when it's on the administrator's list and the administrator wants to get something done," he said.

To contact the reporter on this story: Sylvia Carignan in Washington at scarignan@bloombergenvironment.com

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<https://chemicalwatch.com/116584/federal-watchdog-renews-criticism-of-us-epas-iris-programme>

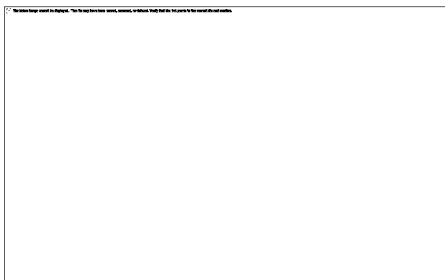
Federal watchdog renews criticism of US EPA's IRIS programme

GAO report: Agency programme offices 'need far more chemical assessments' than being produced

[Kelly Franklin](#)

North America editor

14 May 2020



A congressional watchdog has called on the US EPA to improve the predictability of its Integrated Risk Information System (IRIS) programme and ensure chemical data needs at the agency are being met, raising a fresh round of concerns on a programme that has been scrutinised for more than a decade.

The IRIS programme, which conducts independent risk assessments to support the EPA's work on hazardous chemicals, has historically been the target of industry criticism for lacking transparency and its "inability to produce scientifically sound hazard assessments". At the same time, environmental advocacy groups have defended the essential role the programme serves in informing regulatory decisions.

A recent report from the US Government Accountability Office added a new element to the ongoing debate. It identified "transforming EPA's processes for assessing and controlling toxic chemicals" as a 'high risk' issue, meaning it is vulnerable to fraud, waste, abuse and mismanagement or requires transformational change to improve its effectiveness.

Issues related to the IRIS programme have been on the GAO's radar since as early as 2008, and were the subject of a March 2019 report in which the nonpartisan agency questioned the EPA's decision to cut IRIS's workflow in half by shelving 11 risk assessments, including for formaldehyde.

In its latest recommendations, the GAO said that despite improvements in receiving input on assessment priorities from different agency offices, they "still need far more chemical assessments than the IRIS programme currently produces, and they do not have EPA-wide guidance on what sources to use when IRIS assessments are not available".

"EPA leadership needs to provide documentation showing an agency-wide strategy that includes identifying data gaps and guidance on alternative sources of toxicity information when IRIS values are not available, applicable, or current", it said.

Handbook expected in coming weeks

The GAO also renewed a longstanding request for the EPA to finalise a 'handbook' clearly setting out how IRIS assessments are conducted.

The request is in line with one made two years ago by the National Academies of Sciences (NAS), when it reported on the "substantial progress" the EPA had made in implementing recommendations stemming from a scathing review of the programme's effectiveness in 2011.

According to the GAO report, EPA officials had "almost completed" an internal review of this handbook as of February. But the watchdog said that the "EPA needs to finalise this handbook and show that the IRIS programme is using it."

An agency spokesperson told Chemical Watch the EPA anticipates releasing the handbook for public comment in May-June.

Moreover, to "better ensure the credibility of IRIS assessments by enhancing their timeliness and certainty," the GAO called on the EPA to prepare formal written documentation outlining the timelines for assessments and how these timetables are influenced by various criteria.

The report also flagged concern with proposed budget cuts put forth by the Trump administration in recent years, as these "could have an impact" on the programme's ability to meet the agency's needs if enacted by Congress.

The EPA told Chemical Watch it "remains committed to addressing GAO's recommendations", and outlined ways in which it ensures the transparency and predictability of the IRIS programme, as well as how agency office priorities feed into determining its activities.

Focus on TSCA

With respect to TSCA, the GAO said that many of the recommendations it put forth in a [2013 request](#) for the EPA to strengthen its approach to assessing and controlling chemicals had been superseded by the 2016 passage of the Lautenberg Act.

But despite the reforms to TSCA, "questions remain about whether the Office of Chemical Safety and Pollution Prevention, which oversees implementation of this law, has identified the resources necessary to conduct risk assessments and implement risk management decisions," it said.

The comments come as the EPA faces a [daunting list](#) of immediate deadlines to evaluate the risk posed by 33 substances and to impose regulations on those it finds to present an unreasonable risk.

The GAO said it plans to "work with EPA to review its efforts" to implement the new TSCA programme.

An EPA spokesperson told Chemical Watch the agency is "committed to meeting our obligations under TSCA and anticipates updating GAO on our progress when we submit our 'biannual update on open recommendations' in mid-June."

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<https://www.law360.com/articles/1273135/petro-groups-attack-year-round-high-ethanol-rule-in-dc-circ->

Petro Groups Attack Year-Round High-Ethanol Rule In DC Circ.

Petroleum industry groups told the D.C. Circuit that the [U.S. Environmental Protection Agency](#) went too far when it allowed gasoline made with 15% ethanol to be sold throughout the year, while agricultural groups countered that the EPA should have allowed fuels with even more ethanol.

In briefs Tuesday, interest groups tangled over the EPA's move last year to extend a Clean Air Act waiver and allow the blended gasoline, known as E15, to be sold all year after previously being banned for sale during the summer, in part because of concerns it contributes to smog.

The American Fuel & Petrochemical Manufacturers and other industry groups argued the Clean Air Act limits the waiver to gasoline with 10% ethanol, or E10, which previously could be sold in the summer. The National Farmers Union and other agricultural interests said in their brief that the EPA erred when it banned gasoline with additional ethanol.

The filings are part of a challenge to the EPA's move in 2019 to apply a CAA waiver to E15 — a move that fulfills a mandate from President Donald Trump that was supported by U.S. senators from corn-producing states. Ethanol in the U.S. is largely derived from corn.

The EPA reinterpreted a section of the CAA, which deals with the so-called 1-pound-per square-inch Reid vapor pressure, or RVP waiver. In higher-RVP fuels, emissions from cars can worsen ozone issues, the agency has said. The agency said while the waiver used to apply to E10 gasoline, it now includes E15, which the petroleum industry groups said is not a valid reading of the text.

The groups claim the CAA says "containing gasoline and 10% ... ethanol," which sets a level, not a floor for the amount of ethanol blended into the gasoline.

"When a mixture is identified as containing a certain percent of a substance, the percent identified is a specific percent it contains," the petroleum groups said. "For example, it would be highly unusual to describe an alcoholic beverage that is 50% alcohol as "containing 10% alcohol."

For fuels to be compatible with all vehicles, including older ones, the CAA says new fuels have to be "substantially similar" to old products that are used as benchmarks, called "certification fuels," according to the petroleum groups. But E15 has not been declared "substantially similar" to gasoline with no ethanol, "the fuel used to certify the overwhelming majority of the vehicle fleet," the industry groups said.

And petroleum groups added the EPA didn't properly consider compatibility with older vehicles, and it based its substantially similar determination with E10 fuels based on a faulty set of assumptions, according to the filing.

The agricultural industry groups agreed with the agency's move to allow yearlong sales of E15 gasoline, but said the agency improperly prevented the sale of a variety of other fuel mixtures with higher concentrations of ethanol of up to 50%, referred to as mid-level blends.

The groups base their argument on the "sub-sim" law in the CAA that in part forbids the sale of fuels or fuel additives unless they are "substantially similar" to a "test fuel additive." Mid-level blends are substantially

similar to test fuels that are allowed, such as the high-ethanol test fuels used in "flex-fuel vehicles," according to the groups.

"Because ethanol is now used as a test fuel additive, the sub-sim law no longer limits the addition of ethanol to gasoline," the agricultural groups said.

Jonathan Berry of Boyden Gray & Associates, who represents the agricultural groups, said the EPA's ceiling on ethanol "is refuted by scientific evidence" that it was told about during the public comment process.

"The anti-competitive ethanol ceiling will harm public health by preventing the replacement of toxic gasoline additives with clean-burning ethanol," Berry said in an email Wednesday.

At the time of the rule's approval, then-EPA Assistant Administrator Bill Wehrum, who was the head of the agency's Office of Air and Radiation, defended the rule. He said there's a slight difference in vehicle tailpipe emissions between E15 and E10 gasoline, and very little difference in fuel volatility and evaporation rates.

"At the end of the day, from an environmental standpoint, this doesn't make any significant difference," Wehrum said at the time.

The EPA said it does not comment on pending litigation.

A representative with the American Fuel & Petrochemical Manufacturers declined to comment beyond its filing.

A brief from small refineries also opposed the EPA's move, saying the agency didn't properly consider its impact on small refineries.

The National Farmers Union and other agricultural groups are represented by C. Boyden Gray, Jonathan Berry and James R. Conde of Boyden Gray & Associates.

The petroleum groups are collectively represented by Thomas A. Lorenzen, Robert J. Meyers and Elizabeth B. Dawson of Crowell & Moring LLP, Robert A. Long Jr., Kevin F. King, Thomas R. Brugato and Carlton Forbes of Covington & Burling LLP, John Wagner and Maryam Hatcher of the American Petroleum Institute and Richard S. Moskowitz and Tyler J. Kubik of the American Fuel & Petrochemical Manufacturers.

The EPA is represented by its own Stacey Simone Garfinkle and Perry M. Rosen of the U.S. Department of Justice's Environment & Natural Resources Division.

The lead case is American Fuel & Petrochemical Manufacturers et al. v. U.S. Environmental Protection Agency, case number 19-1124, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Keith Goldberg and Dave Simpson. Editing by Orlando Lorenzo.

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<https://www.law360.com/articles/1271977/epa-coal-ash-proposals-offer-flexibility-but-also-uncertainty>

EPA Coal Ash Proposals Offer Flexibility, But Also Uncertainty

May 13, 2020,

Despite the U.S. Environmental Protection Agency's current broad (but temporary) exercise of enforcement discretion, this has been a busy spring for the agency. On March 3, the EPA proposed revisions to the federal coal combustion residuals, or CCR, rule.

The proposal, which the EPA termed Part B of its "holistic approach to closure," follows the Part A proposal, published by the agency in November 2019. Part of a flurry of CCR-related activity, Part B came closely behind the EPA's proposed federal CCR permit program, published in the Federal Register on Feb. 20.

Meanwhile, on April 15, the U.S. District Court for the District of Columbia partially overturned the EPA's approval of Oklahoma's coal ash permit plan, holding that the program did not include cleanup provisions for certain unlined storage areas as required by the appeals court.[1]

Multiple utilities and trade organizations have noted that the electricity generation industry is one that relies heavily on long-term planning. These developments, along with other industry-impacting rule changes — such as the April 16 Mercury and Air Toxics Standards justification revision — expose the industry to increased uncertainty and, potentially, significant additional expenditures in order to deal with legacy liabilities.

CCR Rule Part A

On Nov. 4, 2019, the EPA proposed an amendment to the 2015 CCR rule. This Part A proposal is part of a multistep effort by the agency to address CCR, and was followed by another proposal announced the same day addressing effluent guidelines for coal-fired power plants.

As with the April 2020 MATS revision, the EPA has drawn sharp criticism from environmental advocates and nongovernmental organizations, who argue that the CCR rule proposal will permit more pollution and slow corrective action.

While the Part A proposal does permit utilities to apply for extensions for continued use of CCR impoundments, those who dismiss the rule as a rollback ignore some key facts:

- The majority of the CCR rule remains operational, including the ongoing requirement for groundwater monitoring and public disclosure of data.
- More impoundments will now fall within the scope of the obligation to stop use and either retrofit or close the impoundments.
- Although the EPA proposes to allow both short-term and longer extensions to compliance submission deadlines, the amendments include specific criteria for what utilities will need to submit to obtain the extensions, and measures for public transparency for both the basis for extensions and progress to reach closure.

On Aug. 21, 2018, in *Utility Solid Waste Activities Group et al. v. EPA*, the [U.S. Court of Appeals for the D.C. Circuit](#) vacated certain provisions of the 2015 CCR rule. The court also remanded some provisions to the EPA for further consideration.

In November 2019, the EPA's Part A proposal established a new deadline of Aug. 31 of this year for facilities to stop accepting CCR into surface impoundment units, and either retrofit them or initiate closure. The current deadline is Oct. 31.

Additionally, Part A proposes changing the classification for clay-lined or compacted soil-lined impoundments from lined to unlined, and specifies that all unlined units must be retrofitted or closed, not just those with groundwater contamination above regulatory levels.

These changes reflect the mandates from the D.C. Circuit. But critics of the EPA's proposal contend that the agency failed to address the exemption for legacy coal ash sites located at closed power plants, which the D.C. Circuit also found was unlawful.

To address circumstances that may preclude compliance with the Aug. 31 deadline — particularly for impoundments that would not have previously been included under the scope of the rule — the EPA proposes a series of amendments that create essentially two tracks for extension of the Aug. 31 deadline.

The first is a short-term alternative, designed to be self-implementing, which would grant facilities a three-month extension to the deadline to cease receipt of CCR waste. The second establishes a process and criteria to petition the EPA for site-specific approval for longer extensions, based on one of two demonstrations. To obtain more than the 30-day self-policing extension of the cease of receipt of waste deadline, the agency would require four lines of evidence from owner/operators:

- A demonstration of the lack of alternative capacity available onsite or offsite;

- A demonstration that CCR and non-CCR waste streams must continue to be managed in the CCR surface impoundment, due to the technical infeasibility of obtaining alternate capacity prior to Nov. 30 of this year — a demonstration that must include an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use;
- A detailed workplan on obtaining alternate capacity for CCR and/or non-CCR waste streams, and a narrative discussion of the steps and process that remain necessary to complete development of alternate capacity for the waste stream(s); and
- A narrative on how the owner or operator will continue to maintain compliance with all other aspects of the CCR rule.

The proposed amendments include specific requirements for extension petitions; set out parameters for granting the extension; set deadlines to submit the applications; and require semiannual progress reports to be made publicly available. Increased cost or inconvenience will not be sufficient bases to extend the deadline. The EPA intends to publish decisions for public comment before issuing final orders to grant extensions.

The key deadlines in the proposal are summarized below:

Proposed Compliance Deadline for CCR Surface Impoundments	Deadline Date
New cease of waste deadline for unlined and formerly clay-lined surface impoundments	Aug. 31
New cease of waste deadline for surface impoundments that failed the minimum depth to aquifer location standard	Aug. 31
New short-term alternative to initiation of closure (up to a 3-month extension to cease of receipt of waste deadline)	No later than Nov. 30
New site-specific alternative to initiation of closure due to lack of capacity	No later than Oct. 15, 2023
New site-specific alternative to initiation of closure due to permanent cessation of coal-fired boiler(s) by a date certain for surface impoundments 40 acres or smaller	No later than Oct. 17, 2023
New site-specific alternative to initiation of closure due to permanent cessation of coal-fired boiler(s) by	No later than Oct. 17, 2028

a date certain for surface impoundments larger than 40 acres

CCR Rule Part B

Part B of the CCR rule proposal builds upon the foundations of Part A. In Part B, the EPA proposes that owners and operators would be required to submit site-specific demonstrations within one year of submitting an initial application (13 months after the final rule's effective date).

If the EPA approves a demonstration, then such approval would be effective for the life of the unit. If the agency denies the demonstration, the unit would need to cease receipt of waste and initiate closure within six months.

This more recent proposal also addresses the use of CCR in units subject to closure for cause. Specifically, the EPA proposes two alternatives that would allow for the use of CCR during the closure process.

The first alternative would prohibit the addition of new CCR to a unit after the unit's closure has begun, but would allow CCR to be used "for the purposes of supporting closure of the CCR unit." Practically speaking, this alternative would allow an owner or operator to consolidate CCR from multiple units into a single unit — even though the unit receiving the CCR was already required to cease receipt pursuant to the CCR rule's closure deadlines.

The EPA anticipates that such consolidation "would result in an overall smaller CCR unit footprint." In order to make use of this alternative, an owner or operator would need to conduct the work under an approved written closure plan, which would detail how the CCR would be used during the closure work.

The second proposed alternative allows for what it calls the "beneficial use" of CCR. The agency gives the example of CCR installed under a final cover system to ensure proper subgrade drainage. As with the first alternative, such beneficial use would also require a written closure plan for the affected unit(s).

One additional point of interest proposed in Part B is an additional closure by removal alternative for owners or operators who cannot meet the CCR rule's current closure by removal requirements and corrective action deadlines.

The EPA's Part B proposal would allow an owner or operator that cannot complete groundwater corrective action by the deadline for the other closure activities to finish groundwater corrective action during a post-closure care period. Groundwater remediation and monitoring is often a lengthy undertaking, and this approach would allow an owner/operator to certify that a CCR unit is closed, while continuing ongoing efforts to monitor groundwater.

Finally, in its Part B proposal, the EPA outlines additional reporting requirements geared toward increasing transparency surrounding the closure process. The proposal would require owners and operators to provide notice of intent to close a CCR unit, and would be required to provide certain annual updates regarding the status of the closure.

Those annual updates would include: (1) a summary of the unit's current stage of closure (e.g., dewatering, excavation, etc.); (2) an updated closure schedule that includes the dates of major closure milestones, and any changes to the closure schedule; and (3) information related to any issues experienced during closure which may impact the scheduled closure of the unit, and how those problems are being addressed. Under the EPA's proposal, these annual progress reports would be due by Jan. 31 of each year.

Next Steps for Owners and Operators of Impoundments

The comment period closed on Part B on April 17. Regardless of the outcome of the final revisions to the CCR rule, owners and operators of CCR impoundments have ongoing compliance obligations and potential for liability.

It is also important to remember that failure to comply with the CCR regulations is not the sole source of risk. Separate from the CCR rules, contamination from CCR disposal units can trigger federal or state cleanup requirements.

In addition, neighbors, public interest groups and other stakeholders may respond to alleged contamination from CCR units with litigation under citizen suit or other statutory provisions, or traditional common law claims such as nuisance or trespass. Further, the EPA's proposals, decisions and revisions on other rules that impact coal-fired plants foment uncertainty and make a holistic CCR risk strategy (rather than one that focuses solely on regulatory compliance) even more prudent.

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<https://www.law360.com/articles/1273382/state-ags-sue-epa-over-covid-19-enforcement-policy>

State AGs Sue EPA Over COVID-19 Enforcement Policy

Nine states' attorneys general sued the [U.S. Environmental Protection Agency](#) on Wednesday in New York federal court over its new policy curtailing enforcement of clean air and water rules during the COVID-19 pandemic, saying it encourages industrial pollution as people with respiratory and cardiovascular problems are getting sick.

New York Attorney General Letitia James led the coalition of nine AGs in filing the complaint that claims the Trump administration's new policy is exploiting the coronavirus crisis by letting companies violate the Clean Air, Clean Water and Safe Drinking Water acts if they can claim their noncompliance is linked to business troubles caused by the virus.

"The Trump administration cannot give industries the green light to ignore critical environmental and public health laws, especially during a public health crisis," James said in a statement. "The EPA's non-enforcement policy puts our already damaged public health in danger by freely allowing pollution from big corporations."

The complaint asserts that the EPA has acted beyond the scope of its authority, and that the "arbitrary and capricious" nonenforcement policy is an abdication of EPA's statutory responsibilities and was promulgated without notice and comment.

The AGs' suit responds to the EPA's March 26 decision to temporarily suspend some compliance obligations for entities affected by the coronavirus crisis.

Susan Bodine, who leads the EPA's Office of Enforcement and Compliance Assurance, issued the new policy to the agency's state, tribal and local government partners outlining the agency's approach to enforcing regulations when entities find themselves unable to comply due to COVID-19-related circumstances such as personnel shortages or travel restrictions.

The compliance obligations are divided into tiers, with significant leeway given to businesses that show they can't meet routine compliance monitoring and reporting requirements. Meanwhile, according to Bodine, those at risk of allowing discharges or emissions that could damage human health and the environment will be scrutinized more closely. Once the coronavirus crisis has passed, she said, the policy will be rescinded.

Environmental groups on April 16 responded to the new policy with a suit of their own, claiming in New York federal court that the relaxed policy's lower standards will contribute to the spread of the virus.

The groups, consisting of 14 environmental justice, public health and public interest organizations led by the Natural Resources Defense Council, said the EPA's decision will put people who live near industrial facilities at risk by both reducing the amount of information available to the public and potentially increasing the amount of pollution.

Wednesday's suit was lodged by the attorneys general of California, Illinois, Maryland, Michigan, Minnesota, Oregon, Virginia and Vermont, as well as New York.

EPA spokesperson Corry Schiermeyer told Law360 in an email Wednesday that the agency can't comment on specific litigation, but noted that Bodine wrote letters to the attorneys general that addressed their concerns.

"I am sorry that you have been misled by inaccurate characterizations of EPA's policy on 'COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program' (Temporary Policy)," Bodine wrote Wednesday. "I urge you to read the policy for yourself, as a lawyer. Please be assured that EPA continues to enforce environmental laws and protect human health and the environment nationwide during these unprecedented times."

Schiermeyer added that the environmental agencies of each of the nine states represented by the AGs who filed the lawsuit have themselves adopted enforcement discretion policies related to the COVID-19 public health emergency.

"As we've stated previously, contrary to reporting, EPA's enforcement authority and responsibility remains active and the temporary guidance does not allow any increase in emissions," Schiermeyer said. "This is not a nationwide waiver of environmental rules."

The nine AGs are represented by Michael J. Myers, Meredith Lee-Clark, Samantha Liskow, Brian Lusignan, Patrick Omilian, Benjamin Cole, Anthony Dvarskas, Lemuel M. Srolovic and Matthew Colangelo under the New York attorney general's office.

Counsel information for the EPA was not available Wednesday.

The case is State of New York et al. v. U.S. Environmental Protection Agency et al., case number 1:20-cv-03714, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Adrian Cruz and Juan Carlos Rodriguez. Editing by Orlando Lorenzo.

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<https://chemicalwatch.com/116582/comments-on-tsca-risk-evaluations-foretell-preemption-uncertainty-ahead>

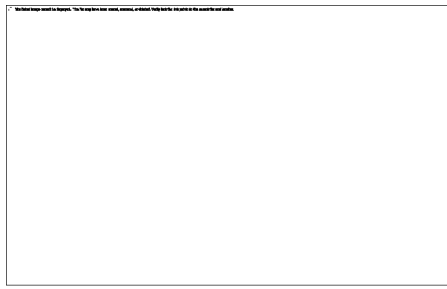
Comments on TSCA risk evaluations foretell preemption uncertainty ahead

Industry and states show support for broad scopes of review, but for different reasons

[Terry Hyland](#)

Managing editor – North America

13 May 2020



Questions over the authority of US states to regulate chemical uses are at the heart of several comments submitted to the EPA as it nears completion of final risk evaluations for the first ten substances subject to review under the amended TSCA.

With the 19 June deadline for finalising those reviews just weeks away, longstanding debates over TSCA's preemption rules are expected to resurface, along with potential legal battles.

The scope of federal preemption of state action is an important question for both industry and state and local governments. Businesses often prefer the uniformity of a single, national standard, while states can reap the benefits of a strong federal system.

But the boundaries of federal preemption under TSCA are "extremely murky", Steve Owens, a partner with law firm Squire Patton Boggs, told Chemical Watch.

There is a high level of "uncertainty and anxiety" about what happens when the EPA issues its final risk evaluations, said Mr Owens, who served as assistant administrator for the EPA's Office of Chemical Safety and Pollution Prevention during the Obama administration.

Lack of clarity

TSCA generally prohibits states from restricting chemicals subject to 'final agency action' unless they secure a waiver. This preemption could be triggered either by a determination in a final risk evaluation that a substance does not pose an unreasonable risk, or a risk management rule imposed to address risks identified during a substance's TSCA review.

Broadly speaking, preemption only extends to chemical restrictions, and many existing provisions have been grandfathered under the law. State-level action focused on reporting, disclosure or monitoring is generally not affected.

Federal preemption, however, extends only to those conditions of use included in the scope of an EPA risk evaluation. And this has given rise to requests for clarity.

The Alliance for Automotive Innovation (AAI), for example, recently stressed the need to avoid "an unnecessary patchwork of state-by-state regulations" in its comments to the EPA on the agency's draft TSCA risk evaluation for trichloroethylene (TCE).

In that evaluation, the EPA made a preliminary finding that 53 out of 54 conditions of use for the industrial solvent posed an unreasonable risk. However, the agency also found that TCE presented no undue risks to the environment.

The EPA also did not make a determination as to risks posed to the general population, according to the AAI, which represents manufacturers of light-duty vehicles produced in the US. Instead, the alliance said the EPA concluded that review under TSCA was unnecessary because other statutes – like the Safe Drinking Water Act and Clean Air Act – already adequately managed risks to the general population.

Still, the AAI said, EPA should clarify whether its reliance on other statutes equates to a finding of "no unreasonable risk" under TSCA and thus preempts further state action to restrict certain uses of TCE.

"It is important that EPA clearly define conditions of use and make affirmative findings of both unreasonable risk as well as no unreasonable risk," said the group.

Maureen Gorsen with Alston and Bird told Chemical Watch that industry would like the EPA to be clearer because it does not want to be subject to regulations in multiple states. Clarity around risk determinations would not guarantee preemption of state action, she said, but it could make it easier to make that case.

That might not be enough, according to Mr Owens. A literal reading of the language in TSCA says preemption applies only to uses and hazards that are covered in the scope of the risk evaluation, he said. The EPA also must support any finding it makes using 'best available' science.

Where EPA concludes that conditions of use are covered by other statutes and do not need to be evaluated under TSCA, "there is a pretty good argument that all those uses are still potentially subject to regulation by states," Mr Owens said.

The AAI did not immediately respond to a request for additional comment.

State interest

States, too, have an interest in broad federal action.

California's Office of Environmental Health Hazard Assessment and the city of New York joined several NGOs in pushing the EPA to consider a wider swathe of potential exposures to TCE.

Oehha said the draft evaluation was too narrow and did not adequately consider exposure risks to the general public from sources like air, water, food and waste sites. "TCE is one of the most pervasive groundwater contaminants in California," Oehha said, and ignoring these potential exposures "will likely delay protection to US residents".

New York City also noted "detectable quantities" of TCE in soil and groundwater, telling the agency in its own comments that the EPA should consider continuing exposures resulting from these types of contamination.

"The city has a strong interest in ensuring that EPA protects New Yorkers by appropriately evaluating TCE [...] and taking regulatory action as necessary to appropriately mitigate risks posed by TCE."

Two years ago, attorneys general for California and New York joined more than a half-dozen other state AGs in calling on the EPA to broaden its TSCA evaluations, despite the potential for federal preemption. "The unreasonable risks to human health and the environment that the initial ten TSCA chemicals pose justifies governmental response," the states said in response to a consultation on the original problem formulations for the first ten chemicals.

Litigation ahead?

One of the main reasons industry supported TSCA reform was because there were "serious concerns" about states like California, New York, Washington, Massachusetts and others taking action on chemicals, Mr Owens said. Industry wanted preemption to stop that.

In December, New York adopted a law that reduces the permissible levels in cosmetics and many cleaning products of 1,4-dioxane – one of the substances with a final risk evaluation due next month – despite heavy pushback from industry groups.

The EPA, however, did not include consumer uses of 1,4-dioxane in the scope of its review. It therefore remains uncertain if New York's law could be challenged.

"There is a lot of ambiguity" about what the final risk evaluations will mean in terms of preemption, Mr Owens said. "What does it mean if EPA doesn't look at certain uses? Nobody has an answer to it right now."

California, for its part, will "continue to evaluate the EPA's actions", the state attorney general's office told Chemical Watch. But the AG's office said it could not comment on actions it "may or may not" take in the future.

Mr Owens said if states decide to step up and take aggressive action on any of these first ten substances, it is very possible there will be litigation over preemption.

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Speedy EPA Schedule Might Hamper SAB Calls To Strengthen Lead Rule
May 13, 2020

<https://insideepa.com/daily-news/speedy-epa-schedule-might-hamper-sab-calls-strengthen-lead-rule>

EPA's Science Advisory Board (SAB) is seeking to strengthen the agency's proposed revisions to its lead and copper drinking water rule (LCR), echoing some criticisms from environmentalists and former agency officials, although EPA's plan to finalize the rule by the end of the summer might make it difficult to address all of SAB's issues.

Charlotte Bertrand, a deputy assistant administrator in EPA's Office of Water, urged the SAB at a May 11 teleconference meeting to ensure its pending recommendations are focused on science rather than policy and reiterated the agency's commitment to issue a final version "by the end of the summer."

SAB agreed at the meeting to finalize [a draft report](#) on the proposal, with some minor revisions that calls on the agency to conduct a more thorough cost-benefit analysis to take into account cardiovascular disease in adults linked to lead exposure. SAB also is urging the agency to drop plans for creating a new "trigger level" in addition to an existing "action level" to drive drinking water treatment changes.

The draft report also addresses the board's concerns with [the proposed rule's water sampling approaches](#), links between children's blood lead levels and IQ, and public education approaches.

Additionally, the draft report provides some answers to questions EPA posed about technologies to locate lead service lines (LSLs) and public outreach to increase LSL replacement. SAB members said during the May 11 teleconference that they had difficulty answering some of the questions EPA asked, either because the questions were poorly worded or because comprehensive answers may not exist.

SAB Drinking Water Committee member June Weintraub, manager of the San Francisco Department of Public Health's Water, Noise and Medical Cannabis Dispensary Permit Program, said the board could reword the questions so answers could be given.

And Chartered SAB member Margaret MacDonnell, a department head at Argonne National Laboratory in Illinois, volunteered to review the scientific literature to see if there were answers to some of the questions or whether the board needs to say the science does not exist.

Steve Via, director of federal relations for the American Water Works Association, which represents a variety of drinking water utilities, urged the board at the May 11 meeting to clearly respond to EPA's questions, especially how to locate LSLs.

Via noted the draft report "speaks to a number of policy issues" and "speaks to issues beyond the charge" EPA gave the panel, a concern the agency also raised at the meeting.

Several environmental groups have called on EPA to monetize the benefits of reduced cardiovascular morbidity and mortality in adults from reduced lead exposure in addition to calculating the benefits of preventing IQ loss in children, and raised the issue in oral and written comments to SAB.

SAB in the draft report makes a similar recommendation, saying that benefits associated with reduced lead exposure and associated reduction in hypertension/cardiovascular effects have been well documented and should be monetized and included in the rule's economic assessment.

"Considerations and assumptions that have not been included in the benefit-cost analysis would likely support more aggressive efforts to replace service lines more quickly," the draft cover letter to the report says.

SAB adds that the agency's quantitative analysis of children's blood lead levels and IQ applied current science, but the board recommends EPA revise the proposed rule to provide greater clarity and transparency regarding uncertainty in the findings.

'Trigger Level'

During the meeting drinking water committee chairman Mark Wiesner, an engineering professor at Duke University, said the cost-benefit analysis EPA did was done well for the areas it covered, but the analysis should have been more comprehensive. Wiesner noted there was no consideration of cardiovascular disease and it is not clear which of two discount rates the agency used to support the rule.

The LCR is a treatment technique rule that requires drinking water utilities to change the chemistry of their water treatment to control corrosion of LSLs and/or remove LSLs when lead is detected in drinking water at the tap at levels above 15 micrograms per liter (ug/L).

EPA has proposed that in addition to the existing 15 ug/L "action level", the rule also add a 10 ug/L "trigger level" that would prompt earlier action from a utility to prevent lead levels from ever reaching the action level.

But SAB says it is not in favor of adding a "trigger level" for corrosion control treatment (CCT) because of the complexity of making lead management decisions regarding CCT or LSL replacement around both trigger and action levels.

"This trigger level adds unnecessary complexity and is not adequate for protection of public health. The SAB finds that a more efficacious course of action could be to lower the lead action level to 10 ug/L and streamline the recommendations around CCT and/or lead service line replacement such that systems with a 90th percentile (P90) level >10 ug/L must follow the CCT installation or re-optimization guidelines," the draft report says.

Ronnie Levin, a visiting scientist at Harvard University's T.H. Chan School of Public Health, also called on the agency to lower the action level to 10 ug/L in her public comments to SAB. Levin spoke on behalf of the Environmental Protection Network, which represents former EPA career staff and confirmation-level

appointees, and noted the agency would need to issue a supplemental notice with the costs and benefits of lowering the action level.

Several SAB members said during the May 11 meeting that they were initially torn on whether the trigger level was a good idea, noting that it could lead to speedier LSL replacements but that it definitely adds more complexity to the rule.

The arguments for reducing complexity prevailed. “It’s just massively confusing to the general public,” said Chartered SAB member Joseph Gardella, a chemistry professor at the University at Buffalo.

“You’ve swayed me,” Wiesner said, referring to comments from Gardella and others.

The draft report also says that neither the proposed trigger level nor the unchanged action level can be considered to have a scientific basis given the compelling body of literature that says there is no safe blood level that has been identified for young children.

Some SAB members said it appears that EPA did not conduct a cost-benefit analysis of having a lower action level, something that often occurs when proposing a regulation based on federal guidance, but which is not mandated.

Other SAB members, however, pushed back on the criticism of where EPA has set the action level, saying it appeared to be a policy recommendation on how to push the level lower.

The board agreed to rework this section of the report to emphasize that the rule should have a single level but that it was not up to the board to suggest what that level should be, although it could recommend that the action level be lower based on the science.

Tap Sampling

The draft report also calls on EPA to carefully consider and explicitly state what the objectives of tap sampling are. “If the overall objective is to collect water that represents the highest possible lead levels to which a resident might be exposed, then the Proposed Rule should indicate how the sampling protocol will achieve this by obtaining representative samples from the lead service line, premise plumbing, or both,” the cover letter to the draft report says.

The draft report says it could be much easier and more representative of the public’s exposure to conduct random sampling, without any precondition for stagnation, of high-risk homes. This would indicate the true exposure rather than a worst-case exposure for high-risk populations. “Based on a more realistic sampling of exposure, an appropriate action level (e.g., 5 ug/L) could be set,” the draft report says.

On the issue of educating the public about the hazards of lead in drinking water, the lead levels in their own water supplies, and the lead levels in water supplied to schools and childcare facilities, the draft report calls on

EPA to strengthen some of the proposed rule's requirements and ensure they are consistently interpreted, implemented and enforced.

"In addition, the SAB recommends that the EPA develop a centralized portal to disseminate information on the Proposed Rule, training courses for states and utilities, and best practices to implement the Proposed Rule," the draft report says.

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<https://thehill.com/policy/energy-environment/497630-9-states-sue-epa-for-suspending-pollution-monitoring-requirements>

9 states sue EPA for suspending pollution monitoring requirements during coronavirus

By [Rebecca Beitsch](#) May 13, 2020 - 04:28 PM EDT



Nine states are suing the Environmental Protection Agency (EPA) for a policy that halts penalizing companies that don't monitor their pollution during the coronavirus outbreak.

A [March 26 memo](#) issued by the EPA informs companies the agency won't take legal action against companies that fail to track emissions, so long as the company documents when they stopped their pollution monitoring and why coronavirus was the cause.

"The Trump Administration is trying to use the current public health crisis to sweep environmental violations under the rug," California Attorney General [Xavier Becerra](#) said in a release announcing the suit.

“What’s worse, the Administration is doing so even as evidence grows that communities exposed to air pollution are at increased risk from coronavirus.

The suit from the states argues the EPA failed to demonstrate the need for the sweeping change nor did it back the need to bypass the notice and comment period required for new rules. The agency has also exceeded its authorities under the Clean Air Act and Clean Water Act which require companies to both monitor and report their emissions to the EPA.

The suit, filed by California, Illinois, Maryland, Michigan, Minnesota, New York, Oregon, Vermont, and Virginia, follows a similar one [filed by environmental groups in April](#).

The EPA would not comment on the litigation, but said the environmental agencies in each of the states that filed the lawsuit have also adopted enforcement discretion policies related to the COVID-19 public health emergency.

"The EPA temporary policy is a lawful and proper exercise of the Agency’s authority under extraordinary circumstances," the agency said in a statement to The Hill. "This is not a nationwide waiver of environmental rules."

The EPA memo allows any number of industries to skirt environmental laws, with [the agency saying it will not “seek penalties”](#) for noncompliance with routine monitoring and reporting obligations.”

The EPA has argued the [controversial memo](#) was necessary as employees would otherwise be overwhelmed by case-by-case requests to halt pollution monitoring, but critics have called it a license to pollute.

- [Overnight Energy: 600K clean energy jobs lost during pandemic, report...](#)
- [US has granted refugee status to just two people since March: report](#)

The agency's memo is temporary, but has no set end date, and while companies must log when they suspended monitoring, critics say the environmental damage will have already been done.

“The Trump Administration cannot give industries the green light to ignore critical environmental and public health laws, especially during a public health crisis,” New York Attorney General Letitia James said in a statement. “The EPA’s non-enforcement policy puts our already damaged public health in danger by freely allowing pollution from big corporations. There has never been a more important time to prioritize the health of our communities.”

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Contaminated Harbor Cleanup Delayed as EPA, Companies Feud

BY JOHN NANCARROW

May 14, 2020

<https://news.bloomberglaw.com/environment-and-energy/contaminated-harbor-cleanup-delayed-as-epa-companies-feud>

A feud involving one of the country's most toxic sites is pitting the EPA against a handful of companies paying for cleanup.

Virus Hardship: The companies—which include General Electric Co., Shell Oil Co., Arkema Inc., and Bayer Crop Science Inc.—have sought to reduce the scale and cost of the cleanup at Portland Harbor, a key Oregon shipping port, claiming hardship due to the coronavirus pandemic. But the EPA recently denied their request.

Congress Irked: Both sides claim the other is unnecessarily slowing the cleanup process—which has yet to begin—at the harbor. That has irked Oregon's congressional delegation, which said in a 2017 letter: "Every year the Portland Harbor goes without cleanup action, our region loses opportunities in the form of tax revenue, jobs, and property value, impeding economic opportunities for this important 11-mile stretch of industrial waterfront land within the City of Portland." Sylvia Carignan has the [story](#).

TOP STORIES

[Green Groups, Trump Lawyers Find Rare Alignment in Climate Case](#)

Environmental groups and left-leaning states are in unusual agreement with the Trump administration in a climate-related case focused on tractor-trailers.

[Supreme Court Superfund Ruling Sparks Feud in Climate Cases](#)

State and local governments are sparring with Chevron, Shell, and other major oil industry players over the implications of a recent Supreme Court decision on climate litigation.

[States Sue Trump's EPA Over Rule Relaxation During Pandemic](#)

Nine states sued the Trump administration for allegedly abdicating its responsibility to enforce U.S. environmental laws during the pandemic, challenging a recent plan to relax enforcement due to worker shortages and travel restrictions stemming from the outbreak.

[EPA to Begin First-Ever 'Unilateral' New Chemical Restriction](#)

The EPA is preparing to issue a "unilateral" restriction on new chemicals, an option it's never used before, a top agency official said yesterday.

[EPA Didn't Track Grant Money Carefully, Internal Watchdog Says](#)

The EPA made three times as many improper grant payments than it reported last fiscal year, according to a report issued yesterday by the agency's internal watchdog.

Climate Change Risk Review Ahead at Former Nuclear Weapons Sites

The Department of Energy will determine how climate change will affect its former nuclear weapons and research sites, the agency said in response to a watchdog report yesterday.

Efforts to Gauge Pollution Will Slow During Pandemic, EPA Says

Nationwide efforts to assess contamination are expected to slow during the coronavirus pandemic, the director of the EPA's brownfields program said yesterday.

BIG LAW BUSINESS: Partner Pay Cuts May Reach Richest Law Firms If Recovery Drags

Heading into the week, there seemed to be a firewall protecting profit distributions at the wealthiest Big Law firms. But that illusion was swept away when Quinn Emanuel, the fifth-richest law firm by profits per partner, reportedly delayed partner draws.

Follow Bloomberg Law's global coverage of the coronavirus pandemic on our [Coronavirus Outbreak channel](#), and track the latest changes in the federal court operations with our [interactive map](#).

Federal Courts Respond to Covid-19

The nation's federal courts have adjusted their operating status in response to the Covid-19 virus, with each court empowered to make decisions about how to proceed. (Touch or hover on the map for details.)

Map last updated at 4:42 PM Eastern Time, May 12, 2020.

⦿ Federal appeals courts ■ Federal district courts



Utah
Circuit: 10
Districts:
Utah:
- Courthouse access restricted
- Teleconference required
- Teleconference encouraged
- Jury trials canceled or postponed

Source: Bloomberg Law analysis of public records.

Note: For the District of Columbia District, court access is restricted, jury trials are canceled or postponed, and teleconference is encouraged.

Map does not include districts of Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands, or U.S. Possessory courts. District court judges may impose additional restrictions. When both "Teleconference required" and "Teleconference encouraged" show in the same court, it means it depends on cases.

Bloomberg Law

PRACTITIONER INSIGHTS

INSIGHT: Climate Case Is Ninth Circuit's Golden Opportunity on Nuisance Suits

The Ninth Circuit Court of Appeals has an opportunity to redirect policy and push back on activist attorneys' attempts to improperly expand public nuisance law. With Covid-19 public nuisance lawsuits coming, Tiger Joyce, president of the American Tort Reform Association, discusses the importance of the climate change lawsuit.

Cleaner Air Is Actually Hobbling California's Climate Fight

BY DAVID R BAKER

May 14, 2020

<https://news.bloomberglaw.com/environment-and-energy/cleaner-air-is-actually-hobbling-californias-climate-fight>

For once in California's fight against climate change, lower greenhouse gas emissions aren't cause for celebration. The recent drop in pollution as many factories sit idle is temporary, but it could hurt the state's anti-global warming programs while it lasts.

Many of those green initiatives are funded through a cap-and-trade system and the sale of permits to businesses that pump heat-trapping gases into the atmosphere. Last year, California spent about \$2 billion from the sales to continue building a high-speed rail system, buy electric school buses and prevent wildfires -- all steps to chip away at emissions. Now emissions have decreased as the pandemic has closed offices, factories and schools. State revenue from selling permits in is in jeopardy.

"That money is going to come under increasing pressure," said Chris Busch, research director for the consulting firm Energy Innovation. "It was always everybody's favorite pot of money to pull from."

Analysts expect that the next quarterly auction, on May 20, won't sell out of all the current permits available. Dozens of programs in California could be affected, including electric vehicle rebates, subsidies to help low-income residents insulate their homes and other "things that have real impacts on people's lives," said Katelyn Roedner Sutter, manager of the U.S. climate program at the Environmental Defense Fund.

"I don't think anything is completely safe," she said.



A power plant in Sun Valley, California.

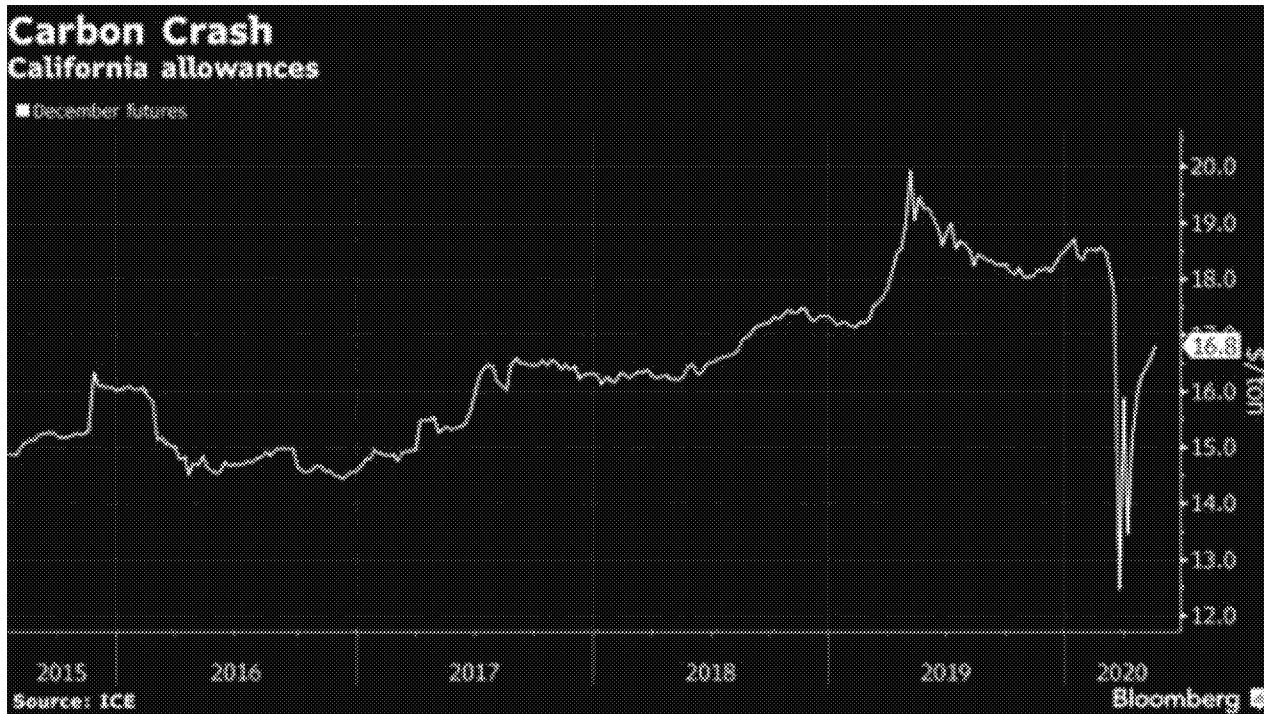
Photographer: David McNew/Getty Images North America

Launched in 2012, the cap-and-trade system, the nation's only economy-wide carbon market, serves as a primary weapon to achieve California's goal of reducing economy-wide emissions to 40 percent below 1990 levels within the next decade.

Here's how it works: Each year, the state sets a limit on emissions across its economy -- the cap -- and requires businesses to buy a permit for each ton of greenhouse gases they emit. They can buy their permits, called allowances, either at quarterly state-run auctions or on a secondary market, where companies trade them like any other financial instrument.

The auctions have state-set minimum "floor" prices that creep higher over time, making emissions more expensive. And the cap ratchets lower year by year. The last auction, in February, raked in nearly \$613 million for climate programs, with all of the available allowances selling out. One month later, a coronavirus outbreak in the San Francisco Bay Area prompted Governor Gavin Newsom to order businesses closed. The economy slammed to a near halt. Newsom has allowed some businesses to resume limited operations but has given no timetable for fully reopening the state's economy.

A spokesman for the agency that oversees the cap-and-trade system, the California Air Resources Board, declined to comment on whether officials were concerned that the drop in emissions would impact revenue.



It's not clear yet how much California's emissions have fallen. Weekly production at oil refineries -- the largest industrial source of emissions -- has plunged by one third since this time last year, according to the California Energy Commission. The International Energy Agency recently estimated overall U.S. emissions fell 9% in the first quarter.

The pandemic has already wreaked havoc with the secondary market for permits. After the lockdown began, prices on the market crashed, bottoming out at \$12.50 per ton, well below the auction floor price of \$16.68.

But the sell-off wasn't triggered by California companies that no longer needed allowances, said Melina Bartels, a power market analyst for BloombergNEF. Instead, it was banks and other financial institutions that participate in the market purely for profit. As stocks tumbled worldwide and oil prices plummeted, they needed money and dumped their allowances.

"The only reason people are ditching credits right now is if they need cash immediately," Bartels said.

Now prices on the secondary market are hovering just below the floor, and environmentalists worry the low emissions will sap demand in the upcoming auction.

Long-Term Optimism

Analysts aren't worried that the next auction will be a complete bust or that the market itself is in danger. The rising price floor is attractive to investors, and the state hasn't stepped back from its ultimate climate goal: to be carbon-neutral by 2045, pulling more global warming gases from the atmosphere each year than it puts in. Cap-and-trade is essential to achieving that.

“With very strong political commitment, there’s going to be an appetite for these allowances,” Busch said. “I don’t think this is catastrophic, either for the cap-and-trade market or the larger policy efforts.”

Even though all government programs will be squeezed this year, as the pandemic puts new pressures on the budget, Roedner Sutter at the Environmental Defense Fund said the state should keep funding climate-action efforts such making homes more energy efficient, work that cuts emissions while providing jobs.

“Those initiatives are the kinds of things that will help the economy recover,” she said. “The state will have to look at those priorities as they think about recovery.”

--With assistance from Mathew Carr.

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Regulation: Agriculture sector urges Congress to press EPA on crop GHGs

<https://insideclimate.com/climate-beat/regulation-agriculture-sector-urges-congress-press-epa-crop-ghgs?s=eml>

The Corn Refiners Association (CRA) and other agriculture industry members of the Biogenic CO2 Coalition are urging Midwestern lawmakers to pressure EPA to declare agricultural crop residues to be carbon neutral, after the agency reportedly decided to omit crops from its forthcoming proposed rule on biomass carbon neutrality.

The group in a [May 11 letter](#) to lawmakers who have been active on the issue, including Sens. Deb Fischer (R-NE), Tammy Duckworth (D-IL) Pat Roberts (R-KS) and Chuck Grassley (R-IA), asks them to pressure the agency to find that agricultural crop residues are also carbon neutral, after confirming that the agency’s forthcoming proposal is limited to woody biomass.

The coalition has been seeking a rule that covers crop residues for more than a decade, the letter adds, arguing that biogenic carbon dioxide from crops should not be regulated the same as fossil fuel emissions under the Clean Air Act.

“We respectfully request that you seek assurances of a prompt publication of a rule proposing *de minimis* characterization of biogenic CO2 from annual crops,” the letter says.

It adds that EPA’s draft proposal, which went to the Office of Management & Budget (OMB) for inter-agency review in February, “astoundingly” omits annual crops. “Recently, a senior EPA official admitted to our coalition chair that EPA has no meaningful plan to address biogenic CO2 from annual crops.”

InsideEPA/climate first reported April 2 that the pending proposed rule was not expected to include agricultural residues despite the extended push from industry, which included several meetings between OMB and outside groups.

The coalition says it supports including woody biomass in the rule but “object[s] to EPA’s failure to address” their crops’ emissions. It argues the “regulatory status quo is particularly harmful to the development of the U.S. bioeconomy.”

The letter also notes that EPA justifies focusing only on forest biomass because the agency’s direction from Congress -- through an appropriations rider first adopted in 2017 -- is similarly limited to that fuel.

“As EPA is not moving into alignment with science regarding biogenic CO2 from annual crops, but at least responding to Congressional directives, we respectfully urge your efforts to provide EPA the Congressional input that it apparently needs.”

In addition to CRA, the coalition includes the American Farm Bureau Federation, the National Corn Growers Association, the National Cotton Council of America, the National Cottonseed Products Association, the National Oilseed Processors Association, the North American Millers’ Association and the Plant Based Products Council.

A CRA source says OMB review of the EPA rule could be complete as soon as May 15, and that the group will be pushing hard for a similar rulemaking to address crop emissions.

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How a revised calculation could hurt future climate rules

<https://www.eenews.net/climatewire/2020/05/14/stories/1063128561>

[Jean Chemnick](#), E&E News reporter

Thursday, May 14, 2020

EPA Administrator Andrew Wheeler is overseeing changes to the way the agency estimates the costs of regulations. Francis Chung/E&E News

EPA is on the cusp of proposing changes to its decades-old methodology for measuring costs and benefits in Clean Air Act rulemakings, which if finalized could stymie efforts by future administrations to combat climate change.

The White House Office of Management and Budget is reviewing a draft rule that EPA says would improve the consistency and transparency of regulatory cost-benefit analyses under the landmark environmental law used to limit carbon under both the Obama and Trump administrations.

Meanwhile, an advisory group of experts is vetting separate but related guidance from EPA's policy office that would direct the agency to find the most cost-effective way to limit a targeted pollutant, even if it did less to curb other emissions.

The aim of both is to bolster cost considerations in future rulemakings while deemphasizing public health benefits — a long-held industry priority that observers say is a legacy issue for EPA Administrator Andrew Wheeler.

"I think it's a way to slow down or potentially alter future regulations, give them some points to fight over in future litigation. And until such time as the future agency reverses what they've done, then it's still on the books," said Dick Morgenstern, a former EPA official who is now a senior fellow at Resources for the Future.

The Trump administration has been laying the groundwork to revamp regulatory cost-benefit analyses since 2017, but Wheeler abandoned plans for an agencywide rulemaking last May that would apply to a range of statutes.

Instead, he tasked EPA's assistant administrators with proposing uniform procedures for comparing costs and benefits under individual laws. The only product to date is the air office's proposal for the Clean Air Act, the landmark law used to regulate everything from greenhouse gases to ozone to hazardous air pollutants. The rule is expected to be final by the end of President Trump's first term.

The draft that traveled to OMB on April 10 hasn't been made public, and experts who track it say EPA hasn't provided details. But most expect it to include changes long sought by industry that would limit how rules get credit for reductions to harmful pollutants that aren't their stated target.

These so-called ancillary or co-benefits have been counted in regulatory impact statements for decades, and sometimes contribute the bulk of a rule's benefits. For example, Wheeler was able to tout \$730 million in net benefits from the power plant carbon rule that EPA finalized last year because of its modest cuts to ozone and particulate pollution — not to carbon.

The carbon benefits of the Affordable Clean Energy (ACE) rule were minimized in the regulatory impact statement because EPA swapped the more expansive Obama-era estimate related to global climate damage from carbon dioxide for a steeply discounted figure that looked only at the continental United States. That more limited methodology for the so-called social cost of carbon may also appear in the proposal now at OMB.

The outcome would be that future rules will struggle to justify their compliance costs. That could fuel political opposition if future administrations try to promulgate strong environmental protections, or in some cases make it harder to defend them.

"You're going to make it very, very difficult for EPA to do what it's supposed to do — what its mission is — which is to protect the environment, to protect public health from pollution, and to fight climate change," said Amit Narang, regulatory policy advocate at Public Citizen.

Political pollution

The co-benefit that packs the biggest punch in Clean Air Act rules is fine particulate pollution, and that could be the main target of Wheeler's proposed rule.

EPA monitoring stations have been tracking particulate pollution for decades. The link between particulate pollution, or PM_{2.5}, and death is established by epidemiological studies. Its victims are easier to identify than, say, the victims of mercury poisoning or climate change not because the latter are safer but because the causality is more complex and often more removed in time.

Add in EPA's \$9.5 million value of human life and the direct link between particulate pollution and death makes avoiding soot valuable in regulatory actions.

The ACE rule isn't the only climate rule that particulate pollution helped to justify. Its Obama-era predecessor, the Clean Power Plan, claimed that between \$34 billion and \$54 billion in health and climate benefits could be achieved each year, with avoided deaths largely attributable to less soot, not less carbon.

When EPA proposed the ACE rule in 2018, its own regulatory impact analysis showed 1,400 more deaths under the Trump rule than under the Obama rule because of reduced abatement of particulate pollution. That drew headlines and critical questions on Capitol Hill.

Over the years, fine particles turned the cost-benefit analysis — a practice introduced in an executive order by President Reagan with support from industry — into a powerful argument in favor of regulation.

"I think in large part the fact that more people throughout the political spectrum have embraced it over the years has to do with the rise of particulate matter," said Amy Sinden, a law professor at Temple University.

Formal cost-benefit exercises aren't mandated by the Clean Air Act, though some of its sections allow for the consideration of cost in setting standards, while others do not.

Still, formal cost-benefit accounting has become a standard part of the rulemaking process in recent decades, and those projections tend to dominate media coverage despite being based on assumptions.

"Cost-benefit analysis is like Al Pacino. It just steals every scene it's in," said James Goodwin of the Center for Progressive Reform.

EPA's move last month to kill a 2012 rule limiting mercury in power plants offers some clues about what the draft at OMB might do.

The Obama-era rule to curb mercury and other air toxics justified its \$90 billion price tag by pointing to the rule's massive benefits in avoided particulate pollution. But EPA last month jettisoned those co-benefits and rescinded the Obama-era "appropriate and necessary" finding that supported the rule.

The action on mercury was released a few days after the Clean Air Act cost-benefit rule traveled to OMB after both rulemakings were delayed for several months.

Narang said both rulemakings likely ran afoul of the Office of Information and Regulatory Affairs' career staff, who resisted EPA's bid to radically overhaul the way co-benefits have routinely been accounted for in rulemakings.

"Still, someone — and Wheeler is at the top of that list — is trying to deny consideration of co-benefits beyond this administration into either a second term or into a different president," said Narang.

Trump rule in jeopardy

It's not clear that the cost-benefit rule would survive into a new presidency. For one thing, it's on track to be finalized very late in this term — likely this autumn or winter. If Democrats won control of the White House and Senate this November, they could use a Congressional Review Act resolution to do away with it quickly.

"It's the kind of regulation that could be in jeopardy of being overturned if the election doesn't go in President Trump's favor," noted James Broughel of the Mercatus Center at George Mason University.

If the election does go Trump's way and the cost-benefit rule becomes final, that might carry complications, as well. That's because EPA has been all over the map on co-benefits, rejecting them in rulemakings like the mercury "appropriate and necessary" finding while embracing them when it's expedient to do so (*Climatewire*, Oct. 9, 2019).

Co-benefits from avoided particulate pollution supported the ACE rule. And later this spring, EPA is set to finalize rules for oil and gas operations that are expected to argue that methane regulations aren't needed because the powerful greenhouse gas is captured at wellheads by the same practices and technology used to control an ozone procurer. In other words, it's a co-benefit.

Goodwin of the Center for Progressive Reform said a final rule marginalizing co-benefits could complicate efforts to defend regulations in court during a second Trump term.

"If they have a finalized rule out for cost-benefit analysis saying the precise opposite of how they did the [cost-benefit analysis] rule, that's going to look really weird to a reviewing judge," Goodwin said. "If it's not carefully written, they could be shooting themselves in the foot."

Michael Mandel, an economist at the Progressive Policy Institute, said that despite the apparent inconsistency in how Trump's EPA had handled co-benefits, the administration's objectives seemed to be the same whether it was writing rules or combating the coronavirus.

"What the Trump administration is trying to do, both in this rulemaking but also in the way that they're dealing with this current crisis, is take the human life out of the equation," he said.

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DOJ Defends Mitigation Projects In Settlements, Despite Ban On SEPs

<https://insideepaclimate.com/daily-news/doj-defends-mitigation-projects-settlements-despite-ban-seps?s=eml>

Inside EPA

DawnReeves(dreeves@iwpnews.com)

The Department of Justice (DOJ) in a new legal filing is defending the use of “mitigation projects” in environmental settlements to offset unlawful pollution increases, even as DOJ’s top environmental enforcement official has banned the use of similar supplemental environmental projects (SEPs) to offset penalties.

But the proposed settlement, pending in a federal court in Wisconsin, is raising questions about the difference between SEPs and other projects that federal prosecutors might allow when they settle environmental enforcement cases after DOJ’s Environment & Natural Resources Division (ENRD) chief Jeffrey Clark issued a March 12 memo banning SEPs in future settlements.

In the latest action, DOJ in a May 11 brief makes the case for two mitigation projects -- one to install solar panels on rooftops of a public state university and another to conduct a wood stove swap-out program -- to offset excess emissions from a 2018 explosion and fire at the Superior Refinery in Wisconsin.

The brief details DOJ’s arguments for its motion asking the U.S. District Court for the Western District of Wisconsin to enter a proposed consent decree in *United States of America, et al. v. Superior Refining Company LLC, et al.*

The solar and wood stove projects will “fully mitigate” the fire’s excess emissions, DOJ argues, seeking to differentiate the mitigation projects from SEPs.

Patrick Traylor, a former top EPA enforcement official now in private practice, says the filing sends a welcome signal that DOJ will defend mitigation projects, which he says are inherently different from SEPs that reduce the penalties paid as part of environmental settlements.

But a public comment filed in response to the proposed Wisconsin settlement charges the department is taking an inconsistent approach to the issue and urges DOJ to bar use of mitigation projects as well.

The adverse comment says the settlement applies “a rather flexible application of the concept of ‘mitigation,’ as it will be years after the explosion and fire before these projects reduce emissions from wood-burning stoves and reduce electricity demand at the university.”

It adds that the proposed settlement assesses no penalty or fine, even though mitigation projects theoretically should be in addition to penalties. “Some settlements with mitigation projects may appear remarkably similar to what would have been a SEP settlement under a different DOJ,” says the comment, which was submitted by Bill Lane, whose affiliation is unclear.

Lane objects to the settlement, charging the department “circumvented the spirit, if not the intent,” of Clark’s March 12 memo barring SEPs. “For all of the reasons outlined in [Clark’s] memo, mitigation as implemented in this consent decree is illegal and should not proceed. This is a subordination of [Clark’s] authority. [Clark] should amend his directive to include limitations on mitigation in addition to SEPs. A rose by any other name . . .”

At press time, DOJ did not respond to a request for his identification details.

‘Fundamentally Different’

But in response to his arguments, DOJ’s brief seeks to distinguish between mitigation projects and SEPs. It calls Lane’s comment “misguided” because the SEP memo “only addresses SEPs, and the projects here are identified” as mitigation projects that are “measures to mitigate the harm from the emissions that resulted from the” fire.

SEPs and mitigation projects are “fundamentally different from each other,” the brief adds. A SEP is a project or activity not required by law that defendants undertake as part of settlement. “Unlike SEPs, mitigation is a form of injunctive relief that is within a court’s inherent equitable authority to order.”

An industry source following the issue says one main difference between the two types of projects is that SEPs offset penalties paid to the Treasury while mitigation projects do not.

Traylor tells *Inside EPA* that SEPs and mitigation projects differ in other important ways. Mitigation projects are a use of a court’s “equitable power to remedy past harm,” whereas SEPs are “an exercise of a court’s legal authority and discretion about how much penalty gets paid and how much can be offset through other means.”

Clark’s SEP memo “spoke to the legal remedy” of SEPs and whether the payment of fines could otherwise be directed to some beneficial project not authorized by Congress. “The SEP memo did not touch on the equitable authority of the court to impose mitigation for past harm,” he adds, noting that the memo explicitly says it does not apply to mitigation projects.

Traylor stresses that most people do not understand the difference between the two types of projects and that DOJ’s recent filing is “an important brief because it does signal to those paying attention to the differences between SEPs and mitigation . . . that DOJ is willing to lodge consent decrees with mitigation projects and defend them in front of a court.”

After Clark issued the SEP memo, “there probably was confusion about whether” it would “affect DOJ’s willingness or ability to support mitigation projects. This brief clarifies for anyone who is looking that mitigation projects are not subject to the SEPs policy,” Traylor adds.

On the surface, DOJ’s defense of the mitigation project could appear questionable in light of the SEP policy, the industry source says, but adds that the differences between the two categories becomes clear after delving into the details. This source adds that the settlement is unusual because EPA and Wisconsin were not seeking penalties after EPA determined the explosion was a *force majeure* affecting a prior settlement with the facility.

The mitigation measures are designed to offset the emissions from the fire and were calculated specifically do to so, the source says.

Historically, the types of projects included in the proposed settlement might have been considered SEPs but for the fact that they are not offsetting penalties -- a key difference, according to the industry source.

The source adds that Clark likely would have had to approve the filing.

Other Efforts

Since signing the SEP memo, Clark has suggested that he may also seek to ban SEPs in civil settlements that do not involve DOJ. “I think that it shouldn’t come as any surprise that this is connected in some way to citizen suits. So, I am starting to look at how citizen suits fit into that equation,” he told a March 27 Federalist Society call.

While he said at the time there was “no news” on that front, he expressed concern that SEPs in citizen suits -- as well as citizen enforcement suits themselves -- are not “problem free.”

One related issue that could muddle the matter is DOJ’s push in 2017, when it first took steps to ban payments to third parties in settlements, to drop a mitigation project -- not a SEP -- from a proposed settlement with Harley-Davidson.

That project was also a wood stove swap out program, but it would have had the company pay the American Lung Association \$3 million to implement it in the Northeast, while excess emissions from defeat devices in Harley’s motorcycles occurred across the country. The court has yet to enter that consent decree, even though it has been nearly three years since first DOJ asked it to accept a substitute that dropped the wood stove project.

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<https://insideepa.com/daily-news/states-launch-facial-challenge-epa%E2%80%99s-covid-enforcement-%E2%80%98discretion%E2%80%99?s=eml>

States Launch Facial Challenge To EPA’s COVID Enforcement ‘Discretion’

Inside EPA

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New York and eight other states are filing a facial challenge against EPA’s controversial policy promising broad enforcement “discretion” to industries amid the coronavirus pandemic, arguing the policy exceeds the agency’s authority and skirts statutory mandates to enforce environmental laws.

The May 13 suit filed in the U.S. District Court for the Southern District of New York, *State of New York et al., v. EPA*, represents a frontal legal assault against the policy after environmental groups previously filed suit in an effort to force disclosure of violations blamed on virus-related disruption.

“The Trump Administration cannot give industries the green light to ignore critical environmental and public health laws, especially during a public health crisis,” said New York Attorney General Letitia James (D) in a statement announcing the suit.

The lawsuit challenges EPA’s March 26 guidance stating that the agency would exercise enforcement discretion if companies are unable to report or monitor pollution releases because the pandemic has disrupted their operations. The policy applies retroactively to March 13 and includes no end date.

Other states signing onto the suit are California, Illinois, Maryland, Michigan, Minnesota, Oregon, Vermont and Virginia.

The states make four broad claims: that the “ultra vires” policy exceeds EPA’s authority; that it is “an abdication of [EPAs] responsibility” to implement numerous environmental laws and rules; that the agency implemented it without proper notice and comment required under the Administrative Procedure Act; and that it is unlawfully arbitrary.

“EPA acted arbitrarily and capriciously by making the nonenforcement policy applicable across the board to all industries and to virtually all monitoring and reporting requirements,” the suit says. And EPA assumed “without evidence that the COVID-19 pandemic will prevent (or at least hinder) all industries from performing their monitoring and reporting obligations.”

Further, EPA arbitrarily “failed -- in the midst of a public health emergency -- to consider the impacts of relaxing monitoring and reporting obligations, and agency enforcement, on human health and the environment,” including its “resulting harm” especially to low-income and minority communities that “may be at greater risk of suffering adverse outcomes from COVID-19.”

With respect to EPA’s alleged overstepping of its statutory mandates, the suit calls the enforcement policy an improper “blanket waiver.”

“[F]ederal environmental laws give EPA or the President authority in emergency situations to take expedited action to protect public health or in the public interest, but none of these provisions applies here, and the agency did not invoke any such provision in issuing the nonenforcement policy.”

Strong Pushback

Even backers of stringent environmental enforcement concede that the pandemic could create some need for enforcement discretion by the agency.

But EPA’s March guidance has been the subject of major pushback from states and environmentalists who say it went too far, including arguments from Natural Resources Defense Council President Gina McCarthy that the policy is a “cruel paradox” because it uses an “unprecedented public health crisis to justify allowing polluters to put our health at greater risk.”

Environmental groups submitted an April 1 petition that sought an emergency agency rule requiring companies relying on the new policy to disclose when they stop monitoring or reporting releases, and to provide a justification for doing so.

Those groups then filed suit two weeks later, charging the agency “unreasonably delayed” action on their petition. EPA is scheduled to respond to the group’s motion for summary judgment by May 29. That suit, *Natural Resources Defense Council (NRDC), et al. v. Bodine, et al.*, is also pending in the Southern District of New York.

The states’ lawsuit comes a month after James led a coalition of 13 states urging EPA Administrator Andrew Wheeler to withdraw the policy. Their statement says, “EPA has neither responded to the letter nor taken any of the actions requested by the attorneys general.”

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